

I N D E X T O W I T N E S S E S

<u>FOR THE PLAINTIFFS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Jennifer Miller

By Mr. Schmidt (direct in a.m.)			58	
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By Mr. Gillen		12		65
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Bertha Spahr

By Mr. Schmidt	67			
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1 THE COURT: Be seated, please. All right.
2 Let's take, Liz, if you have them, we'll take the
3 exhibits for Professor Forrest, and there are quite a
4 few. We have P-348. I'll tell you what I'm going to
5 do.

6 I'm going to run through the whole list that
7 I have, and then I'll see if there's any that you're not
8 moving for the admission of and if there are any
9 controversies with respect to these exhibits. P-348 is
10 the witness's CV.

11 630 is the Trojan Horse publication, the
12 book. P-347 is the report itself. P-349 is the
13 supplemental expert report. P-418 is the Kenyon
14 affidavit. P-12 are the FTE articles of incorporation.
15 P-633 is the Why All the Fuss About Evolution and
16 Creation article.

17 P-566 is the FTE letter. P-344 is the case
18 for creation -- a case for creation article. P-634 is
19 the Bible Science newsletter. P-563 is the creation
20 biology textbook. P-560 is the biology and creation
21 textbook.

22 P-1 is the biology and origins textbook.
23 P-562 is the Pandas draft. P-652 is the Pandas and
24 People copy sent by Mr. Buell. P-565 is the
25 introduction to summary chapter. P-6 is Of Pandas and

1 People. P-350 is the FTE letter to Barlett. P-360 is
2 Challenging Darwin's Myth by Mark Hartwig. P-429 is
3 Life in the Big Tent article.

4 P-524, How the Evolution Debate Can't Be Won
5 article. P-355 is an article. P-379 is the State of
6 the Wedge article. P-516 is the Wedge article. P-410
7 is Darwin's Last Stand, an article. P-354 is the Check
8 for ID article.

9 P-473 is, Does Seattle Group Teach
10 Controversy article. P-386 is the intelligent design
11 article. P-390 is the intelligent design book. P-394
12 is the design revolution book. P 357 is the intelligent
13 design article. I don't know if that's comprehensive.
14 I hope it is. Tell me if it's not.

15 MR. ROTHSCHILD: I think there were a couple
16 exhibits already admitted.

17 THE COURT: Yes, clearly several of them had
18 been previously admitted. What is your pleasure with
19 respect to that roster?

20 MR. ROTHSCHILD: Your Honor, the Plaintiffs
21 would seek to move in all of the exhibits into evidence,
22 but I want to just be specific about the expert reports,
23 because we only want to move them into evidence for a
24 specific purpose and not -- I'm not suggesting a
25 precedent that all expert reports come into evidence.

1 With this particular expert, her
2 qualifications, methodology had been challenged. That
3 was the subject of the motion in limine and also
4 argument in court. And for those purposes, her report,
5 we believe, should be part of the record, and, in fact,
6 I would suggest that all of the resources that she
7 relied upon become part of the record for purposes of --
8 for that specific purpose.

9 THE COURT: All right. Before we get to
10 that, let's see if we can color from that list what has
11 already been admitted. Pandas is P-6, I think, is that
12 right?

13 MR. ROTHSCHILD: The first edition of Pandas
14 is P-6. That's the 1989 version.

15 THE COURT: I believe that was admitted
16 previously.

17 MR. ROTHSCHILD: I think that's correct.

18 THE COURT: Do you know of any others that
19 were previously admitted?

20 MR. ROTHSCHILD: I'm going from my list,
21 which you may have not included some of the things you
22 had recorded as admitted. P-11 is the second edition of
23 Pandas.

24 THE COURT: Yeah, I don't have P-11 on this
25 list.

1 MR. ROTHSCHILD: P-328, I don't think you
2 said, but that's one that was admitted through Mr.
3 Pennock.

4 THE COURT: Did we admit P-6, Liz,
5 previously?

6 COURTROOM DEPUTY: I don't have that as
7 admitted already.

8 THE COURT: Then we didn't. Liz typically
9 takes down and cross checks me with what we have not
10 admitted, so I'm not so sure if P-11 was admitted.

11 MR. ROTHSCHILD: We would like to move in
12 P-6.

13 THE COURT: 6 is the '89 version and, I
14 think 11 is the later version.

15 MR. ROTHSCHILD: Correct, Your Honor.

16 THE COURT: All right. So let's then hear
17 the Defendants -- if I understand, Mr. Rothschild, what
18 you are requesting is that the expert report and the
19 various publications, in fact, all the exhibits go in,
20 but not to be considered by the Court in our
21 determination other than the testimony that we heard
22 here in court. They're there for the record.

23 MR. ROTHSCHILD: Obviously, a lot of the
24 documents that she did testify about today will be
25 included in that group, but we're suggesting

1 supplementing the exhibits with the ones she did not
2 mention, but only for the purpose of --

3 THE COURT: Then I misunderstood you.
4 You're suggesting that additional articles that were not
5 referred to in her testimony-in-chief be included in the
6 record?

7 MR. ROTHSCHILD: That's correct. I don't
8 want any question in the record about the thoroughness
9 of her methodology, and we think that's important to
10 make that record. And we have a list of those exhibits,
11 and, you know, we can do that now or if you think that
12 would be better to do it later.

13 THE COURT: Insofar as -- let's take these
14 first. So why don't we have Mr. Gillen and Mr.
15 Thompson, do you want to speak to not the -- the non
16 referred to articles but the referred to articles or any
17 of the exhibits, in fact, because if I understand Mr.
18 Rothschild, you're moving for the admission of all of
19 the exhibits, including the expert report and the
20 supplemental report.

21 MR. ROTHSCHILD: For the limited purpose,
22 yes.

23 THE COURT: As identified and named.

24 MR. THOMPSON: Your Honor, the only
25 objection we have is the introduction of her expert

1 report per se and the accompanying articles. I think it
2 would really fly in the face of our position in the
3 sense that we've challenged her report.

4 We've challenged her methodology. The Court
5 has before it the transcript of the challenge and will
6 be able to review the challenge. Now what we're doing
7 is giving her report more heightened value than that's
8 being introduced in evidence.

9 THE COURT: Well, and you're arguing that
10 the report and the supplemental report shouldn't go in,
11 and you're arguing against the ancillary materials that
12 really don't have exhibit numbers against, contrary to
13 what Mr. Rothschild is asking, you don't want those in
14 either?

15 MR. THOMPSON: Correct.

16 THE COURT: But let's take out the report
17 and the supplemental report and those ancillary exhibits
18 which were not referred to during her testimony. What's
19 your position on the remainder of the exhibits?

20 MR. THOMPSON: We have no objection.

21 THE COURT: All right. We'll admit all the
22 exhibits at this point. And let's concentrate our
23 dialogue on the report and the supplemental report. If
24 I understand what Mr. Rothschild is asking, first of
25 all, we don't have exhibit numbers for the other

1 publications. That's something that we have to do in
2 any event. And you can't move in what hasn't been
3 identified.

4 MR. ROTHSCHILD: They are on the exhibit
5 list, but we would have to make you aware of them.

6 THE COURT: Okay. So we have to note what
7 the exhibit numbers are. If I understand what Mr.
8 Rothschild is saying, he's not requesting that the
9 report go in for the Court or the supplemental report
10 for the Court's consideration but simply to appear in
11 the record.

12 I surmise that, that would be for the
13 purpose of appellate review and not for the purpose of
14 consideration by the Court. I can separate that out for
15 my purposes. If you want to reserve argument on that,
16 that's fine, because this is a little different, but I
17 don't find it an out of bounds request, but I'll not
18 rule if you want to think about that, and we can circle
19 back and revisit it.

20 MR. THOMPSON: I would appreciate it if we
21 have some time to think about it under the circumstances
22 that he's raised.

23 THE COURT: All right. Why don't you put
24 the xx own us then on is counsel. You can return to
25 this topic because I don't think we have to decide this

1 now, and maybe there's a way that you can have some kind
2 of stipulation that you want to enter into the record,
3 and you can do that orally, that sets ground rules, if,
4 in fact, you're agreeable to enter in your report and
5 the supplemental report and the ancillary non-referred
6 to exhibits.

7 I understand Mr. Rothschild's point. I also
8 understand, Mr. Thompson, your point, that it is
9 unorthodox inasmuch as the testimony was limited and
10 didn't encompass the entire report, you do not want the
11 entire report to go in.

12 So if we can firewall, if you will, that,
13 then I think there's probably a way to do that. But
14 you're capable fellas, and maybe you can work out a way
15 to do it. Mr. Gillen is smiling. He likes that
16 perception.

17 MR. GILLEN: I'll take any compliment, Your
18 Honor.

19 THE COURT: Anything you can get. Any other
20 exhibits? I have none on cross.

21 MR. THOMPSON: We do not have any exhibits
22 on cross, Your Honor.

23 THE COURT: All right. Does that encompass,
24 other than those disputed areas which we'll circle back
25 to later in the proceedings, Mr. Rothschild, that's

1 everything?

2 MR. ROTHSCHILD: Yes.

3 THE COURT: All right. Then I think we're
4 prepared to have cross examination of this witness.

5 MR. ROTHSCHILD: One more point, Your Honor.
6 As with Mr. Miller, Dr. Miller, if we could submit to
7 aid in your reading the transcript of demonstratives
8 used with Dr. Forrest, not as exhibits in evidence, but
9 as an aid to your consideration of the issues.

10 THE COURT: The demonstratives were
11 principally the timeline and the intersecting graphs as
12 to the -- why don't you want to reduce them and give
13 them numbers?

14 MR. ROTHSCHILD: I don't mind doing that at
15 all, Your Honor. I'll do that.

16 THE COURT: I'm thinking, for your own
17 purposes, maybe that makes sense. I didn't think of
18 them, but I would certainly like -- I didn't think of
19 them as exhibits. But I'd like to have them. Inasmuch
20 as you're going to submit them, why don't you assign
21 them exhibit numbers, and when we circle back on this
22 other issue, let's deal with that.

23 MR. ROTHSCHILD: The other demonstrative was
24 the comparison charts between creation and science and
25 intelligent design, the six topics.

1 THE COURT: Do you want to say something?

2 MR. THOMPSON: We have no objection to that.
3 However, we do have an objection to the graph which
4 listed the various Supreme Court cases. That's the
5 graph you were talking about?

6 MR. ROTHSCHILD: We did not use that.

7 THE COURT: I'll probably be reading them
8 anyway, if I haven't already. All right. Let's proceed
9 with cross examination.

10 (Whereupn, Jennifer Miller, having been
11 previously duly sworn, testified as
12 follows:)

13 **CROSS EXAMINATION**

14 BY MR. GILLEN:

15 Q. Good afternoon, Mrs. Miller.

16 A. Good afternoon.

17 Q. Pat Gillen, attorney for the Defendants. I took
18 your deposition. I'm going to ask you a few questions
19 today about your direct testimony. You testified that
20 you've been a biology teacher at Dover since 1993,
21 correct?

22 A. Yes.

23 Q. And prior to 2003, the issues that have brought
24 us here today, the biology text, the biology curriculum
25 were not on the radar for you as a teacher at Dover,

1 correct?

2 A. Correct.

3 Q. But you have testified about a meeting you had
4 with Bert Spahr, head of the department, in the spring
5 of 2003; correct?

6 A. Yes.

7 Q. And there was mention of a memo that was
8 generated in connection with Mrs. Spahr's discussions
9 with Dr. Peterman, correct?

10 A. Right.

11 Q. I'd like to ask you to look at that. Again, if
12 you would, and Plaintiffs' counsel has kindly agreed to
13 put it up on the screen for ease. For the record, Mrs.
14 Miller, this is Defendant's Exhibit 1. It's also a
15 Plaintiffs' Exhibit 26.

16 And they've kindly agreed to project it for ease
17 of reference, if that helps you. I want to ask you a
18 few questions about that. You remember Bert Spahr
19 telling you she had a discussion with Mike Baksa, and
20 she took it to Dr. Peterman, correct?

21 A. Yes.

22 Q. And if you look at that memo, Exhibit 1, you'll
23 see that there's a reference to the instructions that
24 Dr. Peterman passed on in the memo. Would you read, if
25 you would, the first paragraph into the record, please?

1 MR. SCHMIDT: Your Honor, I'm not sure
2 whether there is an objection or request for
3 clarification. Mrs. Miller did not testify about this
4 memo, and it hasn't been established that she ever
5 received this memo at any time contemporaneously with
6 its having been published. I think that should be
7 established as the foundation.

8 THE COURT: That sounds like a foundation
9 objection. All right. I'll sustain it on that basis.
10 Why don't you try to establish a foundation prior to
11 questioning her further?

12 MR. GILLEN: Okay.

13 BY MR. GILLEN:

14 Q. I do remember -- let me ask you this, Mrs.
15 Miller. You testified that Bert Spahr came back to you
16 with instructions on how to continue teaching
17 evolutionary theory in your class, correct?

18 A. After this conversation?

19 Q. Yes.

20 A. We had a conversation. I think it was again at a
21 department meeting that this topic came up and that we
22 were to be on guard, but continue teaching as is, yes.

23 Q. And Bert Spahr told you to essentially continue
24 teaching evolution as you taught it, correct?

25 A. Correct.

1 Q. Now I want to ask you, did she continue to -- did
2 she tell you to continue teaching creationism in the
3 classroom?

4 A. No.

5 Q. But you mentioned creationism, correct?

6 A. No, not specifically, no.

7 Q. Is it your testimony that you had no discussion
8 with Bert Spahr about teaching creationism in connection
9 with your presentation of evolutionary theory?

10 A. Yeah, I -- I know that somewhere in here, it
11 says -- I remember reading -- let me see if I can find
12 it. She explained to Mr. Baksa that all biology
13 teachers state that another theory of evolution is
14 creationism, but creationism per se is not taught since
15 it's not addressed by the standards.

16 So when I saw this memo for the first time, I had
17 some misgivings about that, because I disagree that we
18 state that another theory of evolution is creationism,
19 but I do agree that creationism is not taught.

20 Q. And that was the point of my questions. Getting
21 again to what you discussed in connection with
22 evolutionary theory, I just want to make sure that I'm
23 clear on the way you present the subject matter. I
24 think you said this morning that you tell the students
25 you don't care what they believe about how life begins,

1 is that correct?

2 A. Yes.

3 Q. And you don't get into the origins of life
4 question, correct?

5 A. Correct.

6 Q. And you said that you don't get into sort of the
7 microbiological part of that process, the cells and
8 development of cells, is that correct?

9 A. Correct.

10 Q. And you said that you focused on change within
11 species or change in species, correct?

12 A. Yes.

13 Q. You used the example of diversification of
14 finches, correct?

15 A. Correct.

16 Q. And you don't focus on change between species,
17 it's more how one finch becomes another if isolated in
18 the Galapagos Islands, correct?

19 A. Correct.

20 Q. And that's always been your teaching practice,
21 correct?

22 A. Yes.

23 Q. And it is today, is that correct?

24 A. Yes.

25 Q. In addition, you don't focus on what we might

1 consider the cosmological dimension of the question of
2 origin of life, the conditions in the universe that are
3 conducive to life, is that correct?

4 A. Correct.

5 Q. You don't recall any specific instruction from
6 Dr. Peterman to you about how to teach evolutionary
7 theory, is that correct?

8 A. Correct.

9 Q. And you remember Bert Spahr telling you
10 essentially to continue teaching as you were?

11 A. Yes.

12 Q. Now you've testified you remember a meeting with
13 Alan Bonsell in the fall of 2003?

14 A. Yes.

15 Q. And there was a discussion of how teachers
16 addressed origins of life?

17 A. Correct.

18 Q. You explained that you did not address the
19 origins of life, correct?

20 A. Correct.

21 Q. And the other teachers in the department agreed?

22 A. Yes.

23 Q. It was a cordial meeting?

24 A. Yes.

25 Q. And you left on good terms feeling he was

1 satisfied?

2 A. Yes.

3 Q. Creationism was not mentioned during that
4 meeting?

5 A. Correct.

6 Q. And you can't remember any discussions of changes
7 to the biology text or biology curriculum between that
8 meeting and the end of 2003?

9 A. Correct.

10 Q. You do remember though that Bert Spahr remained
11 somewhat concerned, is that correct?

12 A. Yeah, I would say so. Yes.

13 Q. And just to elaborate and be fair, I mean, she
14 had non-tenure teachers, and she was concerned about
15 what this issue might mean for them, correct?

16 A. Correct.

17 Q. You also testified that there was a board
18 curriculum meeting in the spring and summer of 2004?

19 A. Yes.

20 Q. And I don't know if you remember this, but one of
21 the books discussed was the family and consumer science
22 textbook?

23 A. Correct.

24 Q. You remember Sheila Harkins pointed out to the
25 teacher in that area that there was really a very slight

1 difference between the old book and the new book?

2 A. Yes.

3 Q. Mr. Schmidt showed you this morning the
4 curriculum that was -- the curriculum as changed on
5 October 18th, 2004. I wanted to ask you one question.
6 At the top of that column that Mr. Schmidt showed you
7 today, there was a reference to times, weeks, classes.
8 It's the first column to the extreme left of the
9 curriculum chart. And it says there are 19 days. But
10 you don't spend 19 days presenting evolutionary theory,
11 correct?

12 A. No, not typically.

13 Q. Right. This 19 days was put there when you
14 developed this curriculum, correct? You put that there?

15 A. Yes, uh-huh.

16 Q. But it wasn't changed to reflect your change in
17 practice more recently, including your practice with the
18 2004 text, correct?

19 A. Recently, it has. I have submitted a new one,
20 yes.

21 Q. Okay. So -- and that's what you described today,
22 you got a revised curriculum that's now in front of the
23 board, correct?

24 A. I'm assuming. We gave it to Mr. Baksa, so I
25 don't know happens to it after that.

1 Q. And for the record, to be clear on this point,
2 the purpose of those revisions is to bring Dover's
3 biology curriculum, its curriculum guide into closer
4 alignment with the changed state standards, correct?

5 A. No, it was just strictly for time, to more --
6 when we put that 19 days in, it was -- we had taken --
7 at one point, there was a science project basically that
8 all 9th graders had to do.

9 We took that out and we started to rearrange
10 things and probably just sort of dumped days here and
11 there. So a lot of them ended up in evolution. So
12 that's why that states 19 days, because of taking that
13 out. So we have recently, I believe at the beginning of
14 this year, just resubmitted one that more accurately
15 reflects the number of days spent on topics.

16 Q. And that's one or two days, correct?

17 A. I think it says five, maybe now.

18 Q. Okay. And that's been drafted between your
19 depositions -- between the spring of 2005 and this day
20 today?

21 A. Correct.

22 Q. Okay. Good enough. You testified about a
23 meeting that was held with the board curriculum
24 committee on June 2004?

25 A. Yes.

1 Q. And there was discussion of this mural that's
2 been referenced here during that meeting, correct?

3 A. Yes.

4 Q. And you remember Bill Buckingham saying, how can
5 you say you don't teach origins of life if that mural is
6 in the classroom, correct?

7 A. Correct.

8 Q. I think you said there was a heated exchange
9 between Bert Spahr, Mrs. Spahr, and Bill on that issue?

10 A. Yes.

11 Q. Nonetheless, they parted shaking hands, correct?

12 A. Yes.

13 Q. And this was consistent with your sense that the
14 meeting had been productive and that you had explained
15 your position to the board curriculum committee,
16 correct?

17 A. Correct.

18 Q. Now there were other meetings in the spring of
19 2004, correct?

20 A. I remember the one that you just said about with
21 Mrs. Harkins and the family consumer science books.

22 Q. Okay. So that would make two?

23 A. Right.

24 Q. Okay. Good enough. And, you know, insofar as it
25 relates to the biology curriculum, over the course of

1 these meetings, there was kind of a compromise that
2 began to be worked out with the teachers, is that
3 correct?

4 A. Correct.

5 Q. And the teachers said that they'd be willing to
6 point out that Darwin's theory is not necessarily a
7 fact?

8 A. Yes.

9 Q. That there were parts of Darwin's theory that
10 don't have as much evidence as others?

11 A. Correct.

12 Q. Essentially, that you would make students aware
13 that there were gaps and problems, correct?

14 A. Which is something that we've always done, yes.

15 Q. Exactly. Thank you. And by way of compromise,
16 you suggested maybe putting what you had always done in
17 the curriculum, is that correct?

18 A. Correct. Well, I don't know if we suggested it,
19 but it was -- I don't know who drafted the language,
20 gaps and problems, but somehow that came out of those,
21 yes.

22 Q. Okay.

23 MR. GILLEN: Well, may I approach the
24 witness, Your Honor?

25 THE COURT: You may.

1 BY MR. GILLEN:

2 Q. Mrs. Miller, if you would, I'd ask you to turn to
3 page 56 of your deposition, line 4.

4 A. Okay.

5 Q. I just want to make sure the record is clear on
6 this point. If you look at 55, 24, page 55, line 24,
7 through 56, 3, my question to you is simply, during
8 these curriculum meetings, was a compromise worked out
9 where what the teachers did would be put in the
10 curriculum?

11 A. I believe so, yes.

12 Q. Now at the end of that June meeting, you were
13 assured that the department would get the text that had
14 been recommended by the department, correct?

15 A. Yes.

16 Q. And that was the Miller and Levine text, 2002
17 edition?

18 A. Correct.

19 Q. Now talking about the way in which the text jived
20 with the state standards, the 1998 -- when the state
21 standards were recalibrated, the 1998 edition of Miller
22 and Levine didn't jive so well with the state standards,
23 correct?

24 A. Correct.

25 Q. Because there had been a shifting of some topics

1 between different subjects by the state standards,
2 correct?

3 A. I don't think by the state standards necessarily.
4 We didn't have published state standards necessarily
5 before that. So I don't know if, you know, we can
6 compare it to something old to say there was a shift.

7 Q. I take your point. What happened is, the state
8 standards came out and they allocated different topics
9 to different subject matters, and it was inconsistent
10 with your prior practice, correct?

11 A. I'm not sure of what you mean by saying different
12 topics, how it subjected it to different topics.

13 Q. Sure.

14 A. We saw where there was an emphasis, so that we
15 made sure that our curriculum reflected what was in the
16 state standards.

17 Q. Well, let me ask you this. Topics that had
18 previously been considered in connection with the
19 biology course were now shifted to other areas, correct?

20 A. No, I don't say they were shifted to other --
21 like, for example, DNA wasn't shifted to chemistry or
22 anything like that. I mean, that didn't happen.

23 Q. Okay. How about environmental science? Wasn't
24 there some reallocation of topics between biology and
25 environmental science?

1 A. There was a separate set of standards on
2 environmental science where, before we had talked about
3 that in biology.

4 Q. Okay. Good enough. So there was a movement of
5 some topics from biology to environmental science under
6 the state standards, correct?

7 A. Yeah, there was a separate set of environmental
8 and ecology standards.

9 Q. And part of your justification for the 2002
10 edition, its purchase, was that, that edition of the
11 text, as you saw it, jived more perfectly with the state
12 standards, correct?

13 A. Correct.

14 Q. Now during the time of these meetings with the
15 board curriculum committee, you recall receiving some
16 DVD's and videotapes for review?

17 A. One DVD, yes, or a video. I don't remember if it
18 was DVD or video.

19 Q. Do you recall that there were a couple of them,
20 two DVD's and one video?

21 A. The only one I remember is Icons of Evolution.

22 Q. That's the one you watched, correct?

23 A. Yes.

24 Q. You remember that Bill Buckingham provided that
25 tape for your review?

1 A. Mr. Baksa gave it to us, so I'm not sure where he
2 got it, but Mr. Baksa gave to us.

3 Q. But you undestood it had come ultimately from Mr.
4 Buckingham?

5 A. From a board member, yes.

6 Q. Did you think it was someone other than Mr.
7 Buckingham?

8 A. I don't remember if we were told at that point
9 who it came from.

10 Q. If you'd look at page 56, line 17?

11 A. Say the page again, please.

12 Q. Certainly. Page 56, line 17.

13 A. Okay.

14 Q. At that time at least, you answered, I am
15 remembering Buckingham that got the tape and gave it to
16 us.

17 A. Okay.

18 Q. As you sit here today, you have no reason to
19 remember otherwise, do you?

20 A. No.

21 Q. Okay. You remember that, as you recall it, Bill
22 Buckingham focused on an area, a topic, origins of life
23 that you weren't actually teaching?

24 A. What do you mean, he focused on? In a meeting
25 or --

1 Q. It was your understanding he was focused on a
2 topic that you weren't actually teaching, correct?

3 A. As far as his concerns with the textbook?

4 Q. Yeah.

5 A. He had some concerns, like I said, that were only
6 the teacher edition and some concerns with man's
7 evolution, which, yes, we didn't teach.

8 Q. Now you've also today had some product
9 information about a text that's put out by Bob Jones
10 University text?

11 A. Yes.

12 Q. And but you don't remember any discussion of that
13 text at the board curriculum meetings, do you?

14 A. No. I remember it being handed out. And I think
15 it was Mr. Baksa saying that this was obviously one we
16 couldn't use.

17 Q. And when he said that, it was because with
18 reference to its religious content, correct?

19 A. Correct.

20 Q. I think you also testified today there were two
21 charts that Mr. Schmidt showed you, but you don't
22 remember discussion of those either, right?

23 A. No.

24 Q. You attended a board meeting, a board curriculum
25 committee meeting on or about June 14th, 2005, correct?

1 A. Correct.

2 Q. And you remember Alan Bonsell mentioning
3 intelligent design?

4 A. I think that was in my notes from that board
5 meeting, correct.

6 Q. Remember Alan Bonsell saying that the paper
7 should stick to reporting facts?

8 A. I think so, yes.

9 Q. And that he had a sense that, because the papers
10 weren't reporting facts, there was distrust between
11 families, parents, students; correct?

12 A. That's what I had in my notes, yes.

13 Q. You don't remember anything else that Alan
14 Bonsell said at that June 14th, 2004, board meeting,
15 correct?

16 A. I remember looking at my notes that, as you said,
17 I had intelligent design theory with a question mark.
18 So I don't know if that was the first time it was
19 brought up or -- looking at it now, I don't remember why
20 I had that question.

21 Q. Mr. Schmidt asked you this morning about a survey
22 of textbooks that had been done by Mr. Baksa?

23 A. Yes.

24 Q. Prior to you selecting the Miller and Levine
25 text, you had reviewed a number of texts that had been

1 sent by vendors, correct?

2 A. Correct.

3 Q. Mr. Baksa knew you had already reviewed some text
4 in order to make your selection of Miller and Levine,
5 correct?

6 A. I'm assuming, yes.

7 Q. Turning back again, and forgive me for shifting
8 gears, to the June 14th, 2004, board meeting. You don't
9 remember anything that Sheila Harkins said at that
10 meeting, correct?

11 A. Nothing in particular, no.

12 Q. Or anything that Angie Yingling said?

13 A. No.

14 Q. Or anything that Jane Cleaver said?

15 A. No.

16 Q. Or anything that Noel Weinrich said, correct?

17 A. No. I remember notes saying, I don't know if it
18 was this meeting or not, somewhere that Noel said
19 something about all teach of a creation. I'd have to
20 look at my notes to know if it was at that meeting or
21 not.

22 Q. Now at the June meeting of the board curriculum
23 committee, you had been assured that you would get your
24 text, which at that time was the 2002 edition of Miller
25 and Levine, correct?

1 A. Correct.

2 Q. But in July, you learned that there was a new and
3 more recent edition of the Miller and Levine text, the
4 2004 edition, correct?

5 A. Correct.

6 Q. And as you testified this morning, you came into
7 the office and inspected it for changes as it related to
8 the presentation of evolutionary theory?

9 A. Correct.

10 Q. At that time, you thought that the changes
11 addressed Bill Buckingham's concerns, correct?

12 A. Correct.

13 Q. One change pointed out that there were gaps in
14 the evidence, correct?

15 A. I'd have to see the paper to know for sure,
16 but --

17 Q. Well, if you look at your deposition, page 74.
18 And you'll see on page 73, I asked you a question. Let
19 me ask you, in terms of concern that had been expressed
20 about presenting theorist fact, did you see changes
21 presenting the manner of presentation of evolutionary
22 theory? And you answered, yes. And even a lot of Mr.
23 Buckingham's concerns that he had given us originally
24 was some of the reference to man's evolution were taken
25 out. You know, the wording was less controversial.

1 A. Okay.

2 Q. Is that your answer today as you sit here?

3 A. Sure.

4 Q. Now it was around that time that Mike Baksa gave
5 you the text Of Pandas and asked you to review it and
6 give your opinion on the book?

7 A. Yes.

8 Q. Now I know that prior to 2004, you were using the
9 1998 edition of Miller and Levine, correct?

10 A. Correct.

11 Q. And then you -- the department selected the 2002
12 edition of Miller and Levine?

13 A. Correct.

14 Q. It was the same book, new edition?

15 A. Correct.

16 Q. But you had never used Of Pandas before, correct?

17 A. Correct.

18 Q. There was the subsequent meeting of the board
19 curriculum committee in late August of 2004?

20 A. Yes.

21 Q. And the topic of that meeting was generally Of
22 Pandas, correct?

23 A. Correct.

24 Q. I think you said, Bill Buckingham, Sheila Harkins
25 and Casey Brown were there?

1 A. Yes.

2 Q. Alan Bonsell was there?

3 A. Yes.

4 Q. Rich Nilsen and Mike Baksa?

5 A. Yes.

6 Q. Bert Spahr and yourself?

7 A. Yes. And I believe I said Rob Eshbach was, too.

8 Q. You think so?

9 A. I think so.

10 Q. Good enough. You brought certain reservations
11 about the text to the attention of the board, correct?

12 A. Correct.

13 Q. One was the readability, which you talked about
14 today?

15 A. Yes.

16 Q. Also had some reservations about the science?

17 A. Yes.

18 Q. You remember Bert providing information to the
19 effect that she thought indicated the teaching of
20 intelligent design was illegal?

21 A. She had papers with her. I don't know if they
22 were her thoughts, but there were papers that she had
23 gotten from the Internet, correct.

24 Q. And she communicated that information to the
25 board?

1 A. Correct.

2 Q. She also expressed concern again for untenured
3 teachers?

4 A. Yes.

5 Q. There was a back and forth between Mrs. Spahr and
6 the board members about that issue, correct?

7 A. I think so, yes.

8 Q. And the nature of it was essentially this, the
9 board was saying, you're telling us it's illegal, and
10 we're hearing that we can present this legally, correct?

11 A. Yes.

12 Q. At that time, you got the sense that Alan Bonsell
13 was viewing intelligent design and creationism as two
14 different things, correct?

15 A. I would say so, yes.

16 Q. And in connection with these meetings, Dr. Nilsen
17 distributed an opinion from the district solicitor,
18 Stock and Leader?

19 A. Yes.

20 Q. To the effect that intelligent design could be
21 presented legally, correct?

22 A. Re-reading that, I'm not -- it was a lot of legal
23 jargon, so I'm not exactly sure what that memo said,
24 but, yeah, it was handed out, and I was very confused to
25 what it said even to this day.

1 Q. Sure. I wouldn't hold you to any legal
2 conclusion. But you remember the opinion being passed
3 out to the persons present at the meeting, correct?

4 A. Yes, I do remember that opinion being passed out,
5 yes.

6 Q. With reference to Mr. Bonsell's belief that
7 intelligent design could be presented legally in a
8 biology classroom, you had the impression that Bill
9 Buckingham shared that view, correct?

10 A. Yes.

11 Q. Casey Brown, on the other hand, seemed concerned
12 that there was a gray area there concerning whether
13 intelligent design might be considered creationism,
14 correct?

15 A. Yes.

16 Q. Now there was also discussion of whether and how
17 the text Of Pandas could be used in connection with
18 classroom instruction, correct?

19 A. Correct.

20 Q. And you know, at one point, Dr. Nilsen suggested
21 perhaps using it as a reference text, correct?

22 A. Correct.

23 Q. Now the science faculty wasn't keen on that, but
24 they thought it might be a workable compromise, correct?

25 A. Correct. If we had to have the books, at least

1 having them as a reference and not handed out to each
2 student would be more acceptable.

3 Q. And that discussion was kind of like, well, along
4 these lines, we could either assign it to the students,
5 we could have it as a reference in the classroom, we
6 could have a reference set for each student, correct?

7 A. Yes, I believe so.

8 Q. And Bill Buckingham at that meeting expressed his
9 view that each student should be assigned a copy of Of
10 Pandas, correct?

11 A. Correct.

12 Q. He then left early for a doctor's appointment?

13 A. Yes.

14 Q. At that point, Alan Bonsell said that not every
15 member of the board is in agreement with Mr. Buckingham
16 considering whether assigning the text would be the best
17 use of Of Pandas, correct?

18 A. Correct.

19 Q. He said maybe it would better be used as a
20 reference text, correct?

21 A. I believe -- yes. Uh-huh.

22 Q. And again, you left this meeting, as you had
23 prior meetings, thinking that it was generally positive
24 and that some progress had been made, correct?

25 A. Sure.

1 Q. You attended a second board meeting in September
2 2004 -- won't hold you to the dates, but I can tell you
3 that it was September 14th, 2004, correct?

4 A. Sure, I'll go with your numbers.

5 Q. And let's take the date out of it so the record
6 is clear. You do remember going to --

7 A. I have notes from it, yes.

8 Q. -- a board meeting. Okay. Barrie Callahan was
9 there?

10 A. I'd have to look at my notes.

11 Q. That's all right. Well, we did look at your
12 notes at your deposition. If you want to look at your
13 deposition, page 86, line 24?

14 A. Okay.

15 Q. And just look page 86 over, Jen -- excuse me,
16 Mrs. Miller.

17 A. Okay.

18 Q. Looking at that now, do you recall that Mrs.
19 Callahan was present at the meeting?

20 A. Yes, I have some notations that she spoke.

21 Q. She was asking questions about Of Pandas,
22 correct?

23 A. Yes.

24 Q. And Larry Snook was there making comments about
25 the cost of the book?

1 A. Yes.

2 Q. Larry Snook was a former board member?

3 A. Yes.

4 Q. Ultimately, no public funds were used for the
5 purchase of the book, correct?

6 A. Correct.

7 Q. In fact, later you learned that Of Pandas had
8 been donated to the district?

9 A. Correct.

10 Q. After that, Mike Baksa presented a proposed
11 curriculum change from the board curriculum committee to
12 the science faculty, correct?

13 A. Yes.

14 Q. On or about short meeting held on October 8th,
15 2004?

16 A. Correct.

17 Q. The draft provided that students would be made
18 aware of gaps and problems in Darwin's theory, correct?

19 A. By the board curriculum committee?

20 Q. The board curriculum committee proposed change
21 that Mike passed onto you on October 8th, 2004? The
22 draft included language to the effect that students
23 would be made aware of gaps and problems in Darwin's
24 theory, correct?

25 A. It also included the words intelligent design.

1 Q. We'll get there, Mrs. Miller. Just answer my
2 question. That's a yes?

3 A. That was in there, yes.

4 Q. And you were okay with the part about gaps and
5 problems because that was consistent with what had been
6 discussed?

7 A. Right, that was our compromise from before, yes.

8 Q. Understood. Understood. Then the draft also
9 provided that students would be made aware of other
10 theories of evolution, correct?

11 A. Yes.

12 Q. And again, you were okay with that because that
13 had been discussed previously?

14 A. Correct.

15 Q. But the draft also referenced making students
16 aware of intelligent design, correct?

17 A. Correct.

18 Q. And it listed Of Pandas as a reference text?

19 A. Correct.

20 Q. And you were not okay with that, correct?

21 A. Right.

22 Q. For the reasons you explained this morning?

23 A. Yes.

24 Q. Okay. Good enough. And you were upset because
25 you thought this matter had been addressed in the August

1 meeting, correct?

2 A. Correct.

3 Q. And likewise, Mrs. Spahr, Bert Spahr, the head of
4 the science department, was also upset and angry for the
5 same reasons, correct?

6 A. Correct.

7 Q. You were okay with the use of Of Pandas as a
8 reference text. That had been talked about in August of
9 2004?

10 A. Yes. If we had to compromise, we would be
11 willing to do it, yes.

12 Q. Sure. Sure. And -- but you were not comfortable
13 with the idea that teachers would be required to teach
14 intelligent design, correct?

15 A. Correct.

16 Q. And the placement of the term intelligent design
17 in the curriculum, along, as you saw in that draft, led
18 you to question whether or not you'd be required to
19 teach intelligent design, correct?

20 A. Correct.

21 Q. When Mike gave you the draft, he asked you for
22 feedback, correct?

23 A. Yes.

24 Q. And --

25 A. Now that's the draft of what was read, correct,

1 or this draft?

2 Q. The draft of the curriculum, he asked you for
3 feedback on that?

4 A. Yes.

5 Q. The thrust of the feedback provided by the
6 department was to take out the reference to intelligent
7 design and the reference to the text Of Pandas in the
8 curriculum, correct?

9 A. Correct.

10 Q. Later, you learned that the board curriculum
11 committee didn't accept those changes suggested by the
12 science faculty, correct?

13 A. Correct.

14 Q. During the period after Mike had passed this
15 draft curriculum change on to you, Rich Nilsen came to
16 you and spoke with you about the matter?

17 A. Yes.

18 Q. He indicated that Alan Bonsell was thinking maybe
19 to put a note, attend -- append a note to the curriculum
20 indicating that origins of life are not taught?

21 A. Correct.

22 Q. You remember Dr. Nilsen telling you that Alan
23 Bonsell thought this would address your concerns?

24 A. Yes.

25 Q. Dr. Nilsen at that time also explained that he

1 thought that, if the students were going to be able to
2 take the text Of Pandas home, it should be listed as a
3 reference, correct?

4 A. Yes.

5 Q. You expressed concerns again about being required
6 to teach intelligent design theory, correct?

7 A. Correct.

8 Q. You also expressed concern about the district
9 being a test case concerning the legality of teaching
10 intelligent design?

11 A. Yes.

12 Q. You were concerned about personal liability, not
13 just the liability of the district, correct?

14 A. Correct.

15 Q. I think the next major thing that Mr. Schmidt
16 asked you about was the board meeting on October 18th,
17 2005. You remember that Bert Spahr addressed the board
18 at that meeting?

19 A. Yes.

20 Q. In connection with her statement, she equated
21 intelligent design with creationism?

22 A. I don't remember word-for-word her statement,
23 but --

24 Q. No, nor would I ask you. But you remember, she
25 said that teaching intelligent design was unlawful, she

1 thought, correct?

2 A. I think -- again, that there was too much
3 similarity there, that we were uncomfortable with that.
4 So if creationism is illegal to teach, therefore, since
5 intelligent design was close enough to be uncomfortable,
6 we were unsure of where that left us.

7 Q. Right. So there had been no cases on teaching
8 intelligent design?

9 A. Correct.

10 Q. But it was her view that it was nonetheless
11 illegal, correct?

12 A. I guess that was the -- yeah, that's what's being
13 tested here, so --

14 Q. And that was the thrust of her comments that
15 night to the board, correct?

16 A. I would say so, yeah.

17 Q. And she had a concern for untenured teachers,
18 correct?

19 A. Correct.

20 Q. Now there were three versions of the curriculum
21 that were before the board that night, correct?

22 A. Yes.

23 Q. One was labeled Roman 11-A, correct?

24 A. Yes.

25 Q. And I'm not sure these will be helpful, but

1 that's listed over there as Defendants' Exhibit 60. And
2 then there was one that was listed Roman 11-B, correct?

3 A. Yes.

4 Q. And then on the night of the meeting, you
5 received another version, which was Roman 11-C?

6 A. Right.

7 Q. And for the record, Roman 11-A is Defendants'
8 Exhibit 60. Roman 11-B is Defendants' Exhibit 61. And
9 Roman 11-C is, I believe, Defendants' Exhibit 68. I'll
10 check that later. Now I want to ask you a few questions
11 about Roman 11-C. As you sit there on the stand, Mrs.
12 Miller, can you see that?

13 A. I can't read what's in black.

14 Q. You know what. And that's unfortunate. If you
15 look in your book at Exhibit 68, I believe you'll find
16 it. Thank you, Mr. Schmidt. For ease, it's being
17 projected by Plaintiffs' counsel, for which I'm
18 grateful. If you look at that, Mrs. Miller, do you
19 remember that document?

20 A. Yes.

21 Q. And that was the document that Dr. Nilsen
22 presented to the science faculty on the night of the
23 October 18th, 2004, board meeting?

24 A. I believe so, yes.

25 Q. And if you look in the lower left-hand corner,

1 you'll see that it has a note which provides that
2 origins of life is not taught, correct?

3 A. Correct.

4 Q. If you look at the language of the bottom of the
5 column entitled unit content, concepts process?

6 A. Yes.

7 Q. It's difficult to see in any event. But you'll
8 note that on your printed copy, it provides that the
9 students will be made aware of other theories, correct?

10 A. Correct.

11 Q. It omits the reference to intelligent design,
12 correct?

13 A. Correct.

14 Q. Then the final difference that is blocked out and
15 significant in terms of our discussion today is that, if
16 you look at the materials resource column on the
17 right-hand side, it retains the reference to the text Of
18 Pandas, correct?

19 A. Correct.

20 Q. You remember that Dr. Nilsen or -- no, actually
21 it was Mr. Baksa, I believe, who passed this onto the
22 science faculty on the night of the meeting?

23 A. I believe so, yes.

24 Q. You remember that Rich Nilsen had spoken with you
25 about appending the note which provided that origins of

1 life was not taught?

2 A. Yes.

3 Q. Now throughout these discussions in the spring
4 and summer of 2004, the position of the faculty had
5 always been that you didn't teach origins of life,
6 correct?

7 A. Correct.

8 Q. So when this came up, you can't recall exactly
9 what you said, but in your deposition you testified,
10 probably to the effect of, the note is no big deal, we
11 don't teach it anyway, correct?

12 A. Correct. But there was some questions we had, if
13 that limited us to certain things that could or could
14 not be said in the classroom. Even though we had
15 already done it, putting that in the curriculum, did
16 that limit topics that could be discussed.

17 Q. Sure. I understand that. And we'll ask you a
18 few questions about that. But for present purposes, the
19 note, origins of life will not be taught, reflected the
20 teaching practice of the science faculty, correct?

21 A. Sure.

22 Q. Okay. You remember that when Dr. Nilsen had made
23 you aware that Mr. Bonsell was considering placing the
24 note, he thought it was a good idea, that it would
25 alleviate some of the faculty's concerns?

1 A. Yes, he said that. I wasn't exactly sure what
2 that meant, but, yes.

3 Q. And you remember likewise that Dr. Nilsen had
4 talked to you again, as he had throughout the summer,
5 about using Of Pandas as a reference text, correct?

6 A. At the meeting that I had with him?

7 Q. Yes.

8 A. Yes. He explained that, if the students are
9 taking it home, then it has to be listed so that we're
10 covered if a parent asks a question about it, that it's
11 in the curriculum.

12 Q. Okay. Now we know that there were a whole bunch
13 of parliamentary maneuvers on the night of meeting,
14 correct?

15 A. Yes.

16 Q. And that the final curriculum change, which is at
17 issue in this litigation, was produced as a result of
18 that process, correct?

19 A. Correct.

20 Q. And if you look here at this demonstrative, which
21 is, or actually, the curriculum change that Mr. Schmidt
22 showed you earlier today, what I want you to do is, just
23 look at Roman 11-C and ask you this. The principal
24 difference is that Roman 11-C was changed to include the
25 reference to intelligent design, isn't that correct?

1 A. What was passed, you mean?

2 Q. Yes.

3 A. Yes.

4 Q. In the final version?

5 A. Yes.

6 Q. And the science faculty was disappointed with
7 that outcome, correct?

8 A. Correct.

9 Q. You felt that you had tried to compromise, and
10 still they had put intelligent design in the curriculum,
11 is that correct?

12 A. Correct.

13 Q. Apart from that though, you had agreed to make
14 the students aware of gaps and problems, correct?

15 A. Correct.

16 Q. Make them aware of other theories? In fact that
17 was in the text, correct?

18 A. Right, it talks about Lamarck as a pre-cursor to
19 Darwin's theory of evolution.

20 Q. Sure. And you had agreed to make use of -- or to
21 the use Of Pandas as a reference, correct?

22 A. I guess. Again, if it had to be there, I don't
23 know if we agreed to it, but if it had to be there, then
24 at least, as just sitting on a shelf in a classroom was
25 better than handing it out to each student.

1 Q. Sure. Now you've also testified about a comment
2 that Heather Geesey made at the meeting to the effect of
3 someone being fired?

4 A. Yes.

5 Q. And I take it from your testimony this morning
6 that you were under the impression it was a comment
7 directed to the teachers, correct?

8 A. Correct. She said, the teachers will be fired.

9 Q. That's what you say she said?

10 A. Yes, that's what I remember she said because --

11 Q. She denied it.

12 A. I understand that, but I jumped up to the podium.
13 So if she said someone else, I don't know why I would
14 have stepped up unless she said it about me.

15 Q. Nor would I deprive you about your understanding,
16 but she has denied that, correct?

17 A. Correct.

18 Q. And the next day, she circulated a note saying,
19 that's not what I meant?

20 A. Correct.

21 Q. Are you aware that Mrs. Geesey requested a
22 transcript of the tape in the aftermath of the
23 allegations that she threatened the teachers with
24 firing?

25 A. No.

1 Q. Do you have any idea why she requested a
2 transcript if she was trying to cover it up?

3 THE COURT: Hang on a minute.

4 MR. SCHMIDT: The question was, did she know
5 something, and the answer was, no, and then the
6 follow-up question asked for more information about what
7 she's testified she didn't know. So lack of foundation.

8 MR. GILLEN: I'll withdraw the question,
9 Your Honor.

10 THE COURT: All right.

11 BY MR. GILLEN:

12 Q. The next development in the story, from your
13 standpoint, Mrs. Miller, if I'm correct, is the
14 development of the statement, correct?

15 A. Correct.

16 Q. In that, after the board meeting, you had told
17 Mr. Baksa that you wanted specific direction if
18 intelligent design was mentioned in the curriculum, what
19 the teachers were to say, what exactly word-for-word the
20 teachers were to say, correct?

21 A. Correct.

22 Q. And subsequently, Mike Baksa produced a draft
23 statement which he passed on to you for your review,
24 correct?

25 A. Yes.

1 Q. You've testified today that you reviewed that
2 statement for its accuracy, scientific accuracy,
3 correct?

4 A. Correct.

5 Q. You added the definition of theory to the
6 statement?

7 A. Yes.

8 Q. You took the use of the term theory away from
9 intelligent design, correct?

10 A. Correct.

11 Q. And that's because you viewed intelligent design
12 as addressing the origin of life not evolution, correct?

13 A. It also said that it was something -- the
14 original said something like, I don't know, be made
15 aware of other theories of evolution, including
16 intelligent design. And, to me, if intelligent design
17 is saying evolution did not occur, then it can't be a
18 theory of evolution.

19 Q. Is it your understanding, Mrs. Miller, that
20 intelligent design says that no evolution occurs?

21 A. If it says that -- if it says that it was created
22 by some intelligent being, then things couldn't have
23 evolved.

24 Q. Let me just ask you the question again, and I
25 would never take away your answer. Just answer yes or

1 no, if you would. Is it your understanding that
2 intelligent design holds that no evolution takes place?

3 A. See, I have conflicting views here. According
4 to -- at that point, what I -- I have two -- when I read
5 Of Pandas and People, then I would say the answer to
6 that is, yes. Listening and hearing to some of what Dr.
7 Behe said since then, he does agree with parts of the
8 theory of evolution. So I think there's two -- to me,
9 there's two conflicting things there.

10 Q. Is it your understanding that the text Of Pandas
11 denies that any evolution takes place?

12 A. I'd have to look at parts of it to know exactly.
13 But again, as far as origins of life are concerned, yes.

14 Q. You've only read parts of it, correct?

15 A. I read the first six chapters, yes.

16 Q. You objected to the press release that was issued
17 by the district in November 19th, 2004, correct?

18 A. Correct.

19 Q. And I want to make sure that I understand your
20 testimony correctly. You thought it created the
21 impression that the science faculty had been involved in
22 the curriculum change, more specifically, the inclusion
23 of intelligent design, correct?

24 A. Correct, and that we agreed with it.

25 Q. And that was your view of what the press release

1 conveyed?

2 A. Yes.

3 Q. And that was the basis for your objection?

4 A. Yes.

5 Q. There was a board meeting on November 9th, 2004,
6 correct -- well, let's say, there was two board meetings
7 in November. The second one, you attended it, correct?

8 A. What -- I don't know. What date was it?

9 Q. Sure, sure. I understand. It's hard to
10 remember. I just want to get a few points. If you turn
11 to your deposition, page 143, line 12.

12 A. Okay. This says, a November 1st board meeting?

13 Q. You're right. You attended that meeting,
14 correct?

15 A. It looks like it, because I have notes from that
16 meeting.

17 Q. Sure. And you recall Alan Bonsell more or less
18 asking for more civility at the meetings?

19 A. I'm looking to see, since I don't remember.

20 Q. If you look at 144, it may be of assistance; 144,
21 beginning at line 9.

22 A. Yes, now I see that. I said that he was not
23 happy with the last board meeting.

24 Q. Barrie Callahan was there also?

25 A. Since I can't be sure, I won't --

1 Q. Okay. And I don't mean to test your memory
2 actually. I just want to get a few points that you
3 recalled and, therefore, can testify to. If you look at
4 145, line 17, Jen?

5 A. Right, there it is.

6 Q. I'm sorry, Mrs. Miller.

7 A. Yes, I see that.

8 Q. Okay. And at that meeting, she gave her opinion
9 that the curriculum change was contradictory, correct?

10 A. Correct.

11 Q. And she thought that was so because the note
12 provided that origins of life was not to be taught,
13 correct?

14 A. Correct.

15 Q. And the subtitle Of Pandas indicates it deals
16 with the question of biological origins, correct?

17 A. Correct.

18 Q. Casey Brown was also present at that meeting?

19 A. I believe so. I remember reading that.

20 Q. She said the students were being ridiculed as a
21 result of the curriculum change?

22 A. Yes.

23 Q. She told the board that they should do onto
24 others as you would have them do onto you, correct?

25 A. I believe so.

1 Q. It was your understanding she was saying that the
2 board should, you know, the board members and members of
3 the community should have a civil exchange, correct?

4 A. Correct.

5 Q. There was a later meeting of the science faculty
6 with the administration in November, around November
7 24th, 2004?

8 A. Yes.

9 Q. There was some discussion of the statements the
10 science faculty had released in response to the press
11 release issued by the board, correct?

12 A. Correct.

13 Q. At that meeting, Dr. Nilsen said that the purpose
14 of the press release was to protect the teachers,
15 correct?

16 A. Correct.

17 Q. Do you recall Mr. Bonsell saying that he was
18 surprised with the reactions of the teachers, he thought
19 that they had been cooperating throughout, correct?

20 A. Now I'm remembering that's two different
21 meetings. We had one meeting just with Dr. Nilsen and
22 Mr. Baksa, and we had one meeting later with Mr.
23 Bonsell.

24 Q. For the purpose of my question, let's look
25 forward to the one with Mr. Bonsell. Do you recall Mr.

1 Bonsell saying that?

2 A. Say it again, please.

3 Q. Saying he was surprised at the reaction of the
4 teachers to the press release because he thought they
5 were on board?

6 A. Yes.

7 Q. And it was at that point you said, we were on
8 board except when you put intelligent design in the
9 curriculum, correct?

10 A. Correct, we tried. We told him that we'd
11 compromise up to the point that you put in intelligent
12 design. At that point, we stopped compromising.

13 Q. Add we sit here today, Mrs. Miller, the board has
14 purchased the text that was recommended by the faculty,
15 correct?

16 A. Correct.

17 Q. The text Of Pandas is not in the classroom as a
18 reference, it's in the library, correct?

19 A. Correct.

20 Q. We know that the curriculum changes resulted in a
21 statement that's read in the biology class in the
22 beginning of the section dealing with evolutionary
23 theory?

24 A. Correct.

25 Q. That statement was intended to be read by the

1 teachers, correct?

2 A. Correct.

3 Q. But so far, for reasons you've stated this
4 morning, the teachers have not read that statement?

5 A. Correct.

6 Q. Dr. Nilsen has also directed that creationism is
7 not to be taught, correct?

8 A. I believe that's in the -- there.

9 Q. And that intelligent design is not to be
10 mentioned, correct?

11 A. It's mentioned because it's read to the students.

12 Q. Right, except for the statement, there's not to
13 be any discussion of it, correct?

14 A. Correct.

15 Q. That the religious beliefs of the teachers are
16 not to be taught?

17 A. Correct.

18 Q. And that the religious beliefs of the board are
19 not to be taught?

20 A. Correct.

21 Q. You comply with those directives, Mrs. Miller?

22 A. Yes.

23 Q. You believe the other teachers do as well?

24 A. Sure.

25 MR. GILLEN: I have no further questions.

1 THE COURT: All right. Thank you, Mr.
2 Gillen. Redirect. Mr. Schmidt.

3 MR. SCHMIDT: During cross examination, Mr.
4 Gillen mentioned a document, an opinion letter from the
5 solicitor. I wonder, before I begin my questioning,
6 whether I could see a copy of that document.

7 MR. GILLEN: If I can find it. Can we take
8 a minute?

9 THE COURT: Sure. Do you need it for
10 redirect?

11 MR. SCHMIDT: Your Honor --

12 MR. GILLEN: It's hard to know until he sees
13 it. While Mr. Schmidt proceeds, I'll look for it,
14 Judge.

15 THE COURT: Why don't you start. We're
16 putting inordinate pressure on Mr. Gillen to find
17 something.

18 MR. SCHMIDT: I don't mean to do that.

19 THE COURT: And it's much harder when
20 everyone in the courtroom is focusing on your efforts.
21 So we'll take the spotlight off Mr. Gillen, and we'll go
22 to Mr. Schmidt, and we'll start redirect, and we'll see
23 if he can locate it.

24 MR. SCHMIDT: All right.

25 **REDIRECT EXAMINATION**

1 BY MR. SCHMIDT:

2 Q. Ms. Miller, a few questions. This morning, I
3 asked you about actions that the teachers were involved
4 in over the course principally of 2004. Mr. Gillen
5 asked you questions about those. And the general topic
6 was compromises that the teachers, especially the
7 biology teachers, made with both administration and the
8 board?

9 A. Correct.

10 Q. Did the teachers initiate any of the actions that
11 come under that heading of compromises?

12 A. No.

13 Q. Were those compromises by the teachers always in
14 response to a proposal or some initiative that was put
15 forward by the curriculum committee or the
16 administration?

17 A. Yes.

18 Q. As a biology teacher and the senior biology
19 teacher, did you believe that any of those steps that
20 you took as compromises were necessary to take?

21 A. No.

22 Q. And did you take those steps because you were an
23 employee of the school district and it looked like those
24 things were going to happen anyway?

25 A. Sure.

1 Q. And you were going to make the best out of a bad
2 situation?

3 A. Correct.

4 Q. Is that fair?

5 A. Yes.

6 Q. I think Mr. Gillen asked you whether Mr. Bonsell
7 mentioned intelligent design at the June curriculum
8 committee meeting that we've at least tagged as probably
9 around June 14th?

10 A. I think it was the board meeting not the
11 curriculum --

12 Q. Board meeting?

13 A. Yes. My notes are from a board meeting, yes.

14 Q. Was there any discussion about what intelligent
15 design meant at that time or was it just mentioned?

16 A. I don't remember any -- in my notes, all I have
17 is a big question mark.

18 Q. I think this morning you said your first
19 substantive information about intelligent design was
20 when you saw Of Pandas and People?

21 A. Correct.

22 Q. That was at the July meeting with Mr. Baksa?

23 A. Correct.

24 Q. You were asked by Mr. Gillen about Bert Spahr's
25 concerns with the teaching of intelligent design and

1 it's legality?

2 A. Right.

3 Q. And I think he asked you whether she was
4 concerned about several untenured teachers?

5 A. Yes.

6 Q. Were you concerned about the legality of teaching
7 intelligent design?

8 A. Yes.

9 Q. Were you the subject of your own concern, if you
10 will, even though you are a tenured teacher?

11 A. Absolutely.

12 Q. Did you have any concern for the students who
13 were going to be in your biology class?

14 A. Yes. As I said this morning, I know a comment
15 has been made that we're only mentioning it, but I'm a
16 teacher, and everything I do in my classroom is
17 teaching. If I don't make my students listen to the
18 morning announcements, and I let them talk over the
19 morning announcements, I'm not saying a word, but I'm
20 conveying to them, I'm teaching them that it's not
21 important to listen to the morning announcements.

22 So even by us reading it, I was concerned, again
23 because there's, to me, I was uncomfortable mentioning
24 it because I know that creationism can't be taught. So
25 I was wondering, you know, this is a gray area. Of

1 course, this is the first time it's being tested. So me
2 on the front line, me saying it, I was concerned of what
3 that meant for me legally.

4 Q. Can you think of any other situation in your
5 experience at Dover Area High School where you were
6 required to read a statement to students about what they
7 were going to be taught?

8 A. No.

9 Q. Can you think of any other situation at the Dover
10 Area High School where you were instructed to tell
11 students that you would mention something, but you
12 weren't permitted to expand on what you mentioned or
13 answer any questions about it?

14 A. No.

15 Q. Did that bother you as a teacher?

16 A. Yes.

17 Q. Why?

18 A. Again, I'm the teacher in the classroom. If
19 students have questions, I feel like they can come to me
20 to get answers. And, again, it put me in a situation
21 where things that I had done in the past, I was unsure
22 if I was to continue to do those. I was unsure of what
23 I could and could not say in my classroom.

24 Q. Is that why you were troubled by the note at the
25 bottom of the curriculum that said, origins of life will

1 not be taught?

2 A. Yes.

3 Q. Because you had been able to respond to students
4 before, even if that was not a formal part of your
5 teaching?

6 A. I think that I asked the question at one of our
7 meetings about, I have my students do current events in
8 science, and someone brought in a current event on a new
9 fossil discovery of man. And I didn't know if I was
10 allowed to discuss that because, to me, that hit on
11 origins of life.

12 Q. When you asked for guidance from either the board
13 or administration on that question, were you given a
14 response?

15 A. I was given a current events policy from Mr.
16 Baksa.

17 MR. SCHMIDT: Your Honor, back to the
18 document. I don't know whether the opinion's been
19 found.

20 MR. GILLEN: Yes. Under the reduced
21 pressure produced by your sage directive, Your Honor, I
22 found it. It was part of the Miller deposition
23 exhibits, Exhibit 5, and is an e-mail from Steve Russell
24 to Richard Nilsen, dated August 26th, 2004, which I
25 gladly turn over to Mr. Schmidt.

1 THE COURT: Take a look at it and see if
2 that raises any additional redirect.

3 MR. SCHMIDT: No further questions.

4 THE COURT: No questions. All right. That
5 will conclude the examination of this witness. Ma'am,
6 you may step down.

7 MR. GILLEN: Your Honor, can I ask for brief
8 recross?

9 THE COURT: I'm sorry. I deprived you of
10 recross. I will grant brief recross from Mr. Gillen. I
11 apologize.

12 MR. GILLEN: That's quite all right.

13 **RECROSS EXAMINATION**

14 BY MR. GILLEN:

15 Q. Mrs. Miller, on redirect, you testified about,
16 there's no other instance where you haven't been allowed
17 to take questions, correct?

18 A. Correct.

19 Q. But you've already testified on my cross
20 examination that you were concerned about liability in
21 this area, correct?

22 A. Correct.

23 Q. You already testified that you told Mr. Baksa you
24 wanted to know word-for-word what you were supposed to
25 say if students asked about intelligent design?

1 A. Correct.

2 Q. Is there any way for Mr. Baksa, Dr. Nilsen, or
3 anyone to know what questions the student would ask in
4 the classroom?

5 A. I guess not.

6 Q. You mentioned that you raised questions about
7 teaching about new developments in science, correct?

8 A. Teaching about what?

9 Q. New discoveries in science that might touch on
10 your teaching of evolutionary theory, right, the fossil
11 record?

12 A. Yes.

13 Q. Mr. Baksa told you, you could address those,
14 correct?

15 A. He gave me the current events policy, and, yes.

16 Q. It's also true that it's been the practice of
17 teachers to say, we don't address creationism, if you
18 want to talk about that, you need to talk to your
19 parents or your family, correct?

20 A. Correct.

21 MR. GILLEN: No further questions, Your
22 Honor.

23 THE COURT: All right. Then that will
24 conclude the questioning for this witness. We have a
25 number of exhibits. Let's take them up now, as I did

1 with the last witness. We'll just read them and then
2 Plaintiffs' counsel can indicate their pleasure.

3 P-210 is the state standards for science and
4 biology. P-148 is the letter to Mr. Baksa from the
5 biology department. P-132 is the document created by
6 Mr. Buckingham. P-136 is the Bob Jones University text,
7 proposed text profile.

8 P-138 is the survey of biology texts. P-149
9 is Beyond the Evolution versus Creation Debate article.
10 P-150 is the Baksa comparison of 2002 and 2004 editions.
11 P-135 is the biology curriculum. P-692 is the statement
12 versions. P-94 is the draft statement. P-98 is the
13 corrections by Miller to the draft.

14 P-100 is the teacher's revision. P-110 is
15 the memo regarding the biology statement. P-104 is the
16 district press release. P-106 is the letter to Dr.
17 Nilsen from the teachers. P-121 is the memo back to the
18 teachers from Dr. Nilsen. All right. Do I have
19 everything?

20 MR. SCHMIDT: That's my list, Your Honor. I
21 think P-135 is identical to P-209, which has already
22 been admitted.

23 THE COURT: All right. We'll strike that,
24 135. And are you moving for the admission of the
25 remaining exhibits other than P-135?

1 MR. SCHMIDT: We have.

2 THE COURT: Any objection?

3 MR. GILLEN: I have no objection, Your
4 Honor.

5 THE COURT: Then as read by the Court,
6 they're all admitted, say, for P-135. Mr. Gillen, on
7 cross, you referred to the Peterman memo, or memo to
8 Peterman, which was D-1. And D-68 is the memo and
9 attached planned instruction curriculum. That would be
10 the second draft. Are you moving for the admission of
11 those exhibits at this time or do you want to wait?

12 MR. GILLEN: I will wait, Your Honor.

13 THE COURT: All right. Do you have any
14 exhibits then?

15 MR. GILLEN: I do not, Your Honor. Thank
16 you.

17 THE COURT: All right. That will conclude
18 the exhibits for that witness. Why don't we -- this is
19 probably an opportune time for us to take a break.
20 We're going to go to 4:30 today. We'll take about a 15
21 minute break, and then we'll take, what I would assume,
22 might be your last witness of the day. All right.
23 We'll be in recess.

24 (Whereupon, a recess was taken at 3:15 p.m.
25 and proceedings reconvened at 3:35 p.m.)

1 THE COURT: All right. Plaintiffs' next
2 witness.

3 MR. SCHMIDT: Plaintiffs call Bertha Spahr.

4 Whereupon,

5 **BERTHA SPAHR**

6 having been duly sworn, testified as follows:

7 THE WITNESS: My name is Bertha Spahr.
8 Bertha is spelled B-e-r-t-h-a. Spahr is S-p-a-h-r.

9 **DIRECT EXAMINATION**

10 BY MR. SCHMIDT:

11 Q. Mrs. Spahr, are you an employee of the Defendant,
12 Dover Area School District?

13 A. I am.

14 Q. What is your position with the district?

15 A. I am a teacher of chemistry, and I am the science
16 department chair.

17 Q. When you teach chemistry, do you teach in the
18 senior high school?

19 A. Yes, I do.

20 Q. And are you the department chair for all science
21 teachers in the district or in the high school?

22 A. Just high school, which is 9 through 12.

23 Q. How long have you been a teacher?

24 A. 41 years.

25 Q. How long have you been teaching at the Dover Area

1 School District?

2 A. 41 years.

3 Q. Have you taught courses other than chemistry?

4 A. The first two years I was there, I taught
5 physics.

6 Q. How long have you been head of the department?

7 A. About 12 years.

8 Q. Is Jen Miller the next most senior science
9 teacher to you in the department?

10 A. Yes.

11 Q. Tell me where you received your undergraduate
12 education?

13 A. I am a graduate of Elizabethtown College.

14 Q. When did you graduate?

15 A. 1965.

16 Q. And what sort of degree did you take?

17 A. I have a B.S. in chemistry.

18 Q. Do you have any education beyond that degree?

19 A. Yes, I hold a master's degree.

20 Q. In what subject?

21 A. In chemical education.

22 Q. And where did you receive it?

23 A. From Shippensburg University.

24 Q. I'm going to ask you some questions about
25 something that has been referred to, at least by me, as

1 a mural. Was there a time when the science department
2 received a mural as a donation or a gift from a
3 graduating student?

4 A. Yes.

5 Q. Can you identify the student?

6 A. Yes, Zach Strausbaugh.

7 Q. About when did Zach Strausbaugh complete the
8 mural?

9 A. It was the late 1990's. I believe 1998.

10 Q. Do you know what the subject matter of the mural
11 was? What did it depict?

12 A. The traditional, if you will, ascent of man.

13 Q. Can you describe a little bit more about what you
14 mean by the traditional ascent of man?

15 A. The mural was 4 feet by 16 feet. At one end of
16 it, you had an ape-like creature on all fours. At the
17 other end of it, you had a man standing upright on his
18 two feet.

19 Q. Where was the mural when you saw it last?

20 A. In Room 217, which was the room next to my room
21 before the renovations.

22 Q. And what year was that?

23 A. 2002.

24 Q. Why was the mural in Room 217?

25 A. The young man who had painted the mural, as his

1 senior focal project, had given the gift to that
2 particular science teacher and, therefore, it was housed
3 in his room.

4 Q. Was the mural hanging on a wall in the classroom?

5 A. No, it was not. It was sit sitting on a
6 chalkboard tray.

7 Q. Why wasn't it hanging on a wall?

8 A. Because when we asked the district janitorial
9 staff to adhere it permanently to the wall, they would
10 not do so.

11 Q. Did they say why not?

12 A. No.

13 Q. You said it was on a chalk tray?

14 A. Yes.

15 Q. Just someplace in a classroom?

16 A. It was sitting in the back of the classroom,
17 which was approximately a 40-foot room. It was both a
18 lab and a classroom together.

19 Q. You said in response to my question about when
20 you last saw the mural, it was right before renovations
21 you saw it in this room?

22 A. Uh-huh.

23 Q. When did you not see it or what were the
24 circumstances around --

25 A. The last time I saw the mural was in August of

1 2002. The teacher to whom the mural was placed in his
2 room was no longer an employee of the district, and I
3 was going into the room to see that the new teacher who
4 was coming had his adequate books and supplies for the
5 coming school year. It was an in-service time.

6 Q. And I take it, you noticed the mural was not
7 there?

8 A. On Friday, it was there. On Monday, it was gone.

9 Q. What happened to the mural?

10 A. I immediately asked the janitorial staff that
11 served our end of the building if they had removed it
12 for any reason. I then called the assistant principal
13 of the school to make him aware that the mural had
14 disappeared, and asked him if he would investigate as to
15 what happened to that mural.

16 Q. Were you ever told what happened to the mural?

17 A. Yes, I was.

18 Q. Were you told what happened to the mural around
19 this time period, that is the beginning of school and
20 the summer, fall of 2002?

21 A. Yes.

22 Q. What were you told?

23 A. I was told that Mr. Reeser, who was at that point
24 the head of the building and grounds, had come in over
25 the weekend, removed the mural from the classroom, and

1 burned it.

2 Q. As the chair of the science department, I take
3 it, you weren't asked for your permission to destroy the
4 mural, were you?

5 A. No.

6 Q. Did the school administration, to your knowledge,
7 do anything about the destruction of the mural?

8 A. When it had been determined that Mr. Reeser had
9 removed the mural and burned it, I went to our then
10 superintendent, Dr. Nilsen, and I asked him what was
11 going to happen to the employee who had removed the
12 property and viciously destroyed it.

13 Q. What were you told?

14 A. I was told that it was a personnel issue and it
15 was none of my concern.

16 Q. Moving to a new topic.

17 A. Okay.

18 Q. Spring of the following year, did you have a
19 conversation with Assistant Superintendent Baksa in the
20 spring of 2003 about a board member and a concern that
21 the board member had about how evolution was being
22 taught in the biology class?

23 A. Yes, I did.

24 Q. Please tell us about when that conversation took
25 place?

1 A. March 31st of 2003.

2 Q. Was there anyone else involved in the
3 conversation besides yourself and Mr. Baksa?

4 A. Not to my knowledge.

5 Q. All right. Where did that conversation take
6 place?

7 A. Either outside my room or within the confines of
8 my room.

9 Q. What did Mr. Baksa tell you?

10 A. Mr. Baksa, as he often did, stopped, if he was in
11 the building, to contact department chairs on various
12 issues. He said, I would like to inform you or give you
13 a heads up that there is a member of the school board
14 who is interested in having creationism share equal time
15 with evolution.

16 Q. Did you respond to what Mr. Baksa said?

17 A. Yes, I responded by asking him, which board
18 member are you referring to, may I ask?

19 Q. What did he tell you?

20 A. He told me it was Alan Bonsell.

21 Q. Did you have any further discussion with Mr.
22 Baksa at that time about the concerns that you just
23 described or the desire to have creation taught 50/50
24 with evolution?

25 A. Not at that time.

1 Q. Did you relay the substance of that conversation
2 to any of the other members of the science department at
3 around that time?

4 A. Yes, I did.

5 Q. What did you tell them?

6 A. I told them that this is an issue which I thought
7 they may be concerned about since they were the ones
8 that were going to teach biology. And as their
9 department chair, I was their mentor. And there was two
10 biology teachers who were untenured, and I knew it would
11 be of concern to them.

12 Q. Did you speak about this conversation with the
13 high school principal?

14 A. Yes. The next day, I went to the high school
15 principal, who was then Dr. Trudy Peterman, and I asked
16 her what direction she would give both me and the
17 department concerning this issue.

18 Q. When you spoke to the teachers, did you tell them
19 to make any changes in how they taught the evolution
20 unit in biology?

21 A. Not at that time.

22 Q. Did Dr. Peterman tell you to make any changes to
23 how evolution was taught in biology?

24 A. The only direction she gave me was to tell the
25 biology teachers that we will teach evolution as

1 directed by the state standards. We could, in fact,
2 mention that there was another theory and then direct
3 the students to either contact their families or their
4 pastors if they wished to investigate that further.

5 Q. Did you have another meeting later in that year,
6 in the fall of 2003, with Mr. Bonsell where the same
7 subject was discussed?

8 A. Yes, we did.

9 Q. Do you recall when that meeting took place?

10 A. Either early in the fall -- probably September,
11 either August or September.

12 Q. Who was at that meeting?

13 A. The science department. Mr. Bonsell was present.
14 Mr. Baksa was present. I do not know others, but I'm
15 sure there were others present. Dr. Peterman may have
16 been there.

17 Q. At any time before that meeting, did Mr. Baksa
18 give you a further heads-up about Mr. Bonsell's position
19 or concerns?

20 A. Mr. Baksa and myself and other members of the
21 department talked about the difference between origin of
22 species and origin of life. We did attempt to explain
23 and clarify this issue to him. I believe his background
24 is not in science. And it was then our suggestion that
25 maybe Mr. Bonsell would prefer to meet with the science

1 department, and his questions and concerns could
2 basically be answered by the experts in the field.

3 Q. Is the meeting then that took place in the fall
4 of 2003 the meeting with Mr. Bonsell that you're talking
5 about?

6 A. That's correct.

7 Q. At that meeting, who was the spokesperson, if
8 there was one, for the science department?

9 A. Primarily Jen Miller.

10 Q. Why was that?

11 A. Because she is the veteran biology teacher.

12 Q. What did she say about evolution and how it was
13 taught at that meeting?

14 A. We made the -- stressed the fact that evolution
15 is taught as change over time, that we emphasize origin
16 of species and not origin of life.

17 Q. Did you speak much at that meeting?

18 A. Not as much as I usually do, no.

19 Q. Fair enough. How were things left at the end of
20 the meeting between the science teachers and Mr.
21 Bonsell?

22 A. We felt it was a very congenial meeting. I,
23 myself, and the rest of the department left there seeing
24 that we had answered his concerns and questions, and we
25 felt that, that was -- we had done an adequate job.

1 Q. At that time, now we're talking about the fall of
2 2003 --

3 A. Okay.

4 Q. -- were you using an older biology textbook?

5 A. Yes, we were.

6 Q. Had you already requested that it be replaced
7 with a newer edition of the biology textbook?

8 A. Yes.

9 Q. Did you have a meeting in the spring of 2004 when
10 that issue came up again, that is the purchase of a new
11 biology textbook?

12 A. Could you refresh my memory on this, please?

13 Q. Sure. Do you remember in the spring, around
14 April of 2004, when there was a meeting where the
15 science department was asked why a new textbook was
16 needed?

17 A. The curriculum committee, is that the meeting you
18 are referring to?

19 Q. Do you recall a meeting with the curriculum
20 committee around that time?

21 A. Yes, there were two meetings; one occurred in
22 April, and the other one occurred in June.

23 Q. I'm talking about the first one.

24 A. All right.

25 Q. What do you remember about that meeting?

1 A. We had been asked previously to submit both the
2 old textbook and the new textbook of the various science
3 courses that were being considered to the board for
4 review. We had done so.

5 There was also another department within the
6 school that had done the same thing as well, and that
7 was the family and consumer science department. So we
8 were going to that meeting to answer questions that they
9 may have had as to why we have chosen the new version of
10 that book and that particular title and author over the
11 old one.

12 Q. Now the biology textbook was not the only book
13 that the science department was seeking to replace, is
14 that correct?

15 A. That is correct.

16 Q. At some time before that meeting in around April
17 of 2004, did anyone from the school administrative staff
18 ask to see a copy of the 2002 edition of the biology
19 textbook to look over?

20 A. Many times. We had been asked to supply them
21 either with copies of the new book we were considering
22 or even the old book that we had used. So more than
23 once, we had given books to the administration for them
24 to disseminate as they saw fit or to whomever had asked
25 for them.

1 Q. At this April meeting when the justification was
2 made why a new book was needed, was there any discussion
3 of the contents or substance of the biology book on the
4 subject of evolution?

5 A. I don't specifically remember the evolution topic
6 coming up there. We did more of that at the June 14th
7 meeting, I believe, and that was because the other
8 department was present.

9 We were simply asked questions as to why, for
10 instance, the chemistry book I had suggested was a new
11 author and a new publisher and what did I find to be
12 more suitable in this one than the one we had had
13 previous to this.

14 I do remember Mrs. Brown saying, when I said to
15 her, the reason I suggested this one is that the
16 problems, which were written in greater detail, would be
17 easier for the students to understand, and she agreed
18 and said she could even do the math problems in the
19 chemistry section, which was very good.

20 Q. I take it, you took the lead on the chemistry
21 book?

22 A. Yes.

23 Q. And did --

24 A. Because I'm the only one teaching chemistry.

25 Q. And did Ms. Miller take the lead on the biology

1 book?

2 A. She did.

3 Q. Did you leave that meeting in April of 2004 with
4 the sense that the new biology book was going to be
5 brought forward for consideration by the board?

6 A. Not at that time.

7 Q. Okay. Did you have another meeting later in that
8 school year with the curriculum committee on the subject
9 of the biology textbook?

10 A. Yes, I believe that was in June.

11 Q. Can you place that meeting in connection with any
12 other events at the school or times in the school year?

13 A. The biology book again, I believe it was Mr.
14 Buckingham specifically, had asked to see a copy of the
15 new Miller and Levine book. The only book we had
16 available at that time was the teacher edition of that
17 book. And so we forwarded the only copy we had to the
18 administration building for him to be able to review.

19 Q. Let me pin that down in time, if I can.

20 A. All right.

21 Q. Was that request between the meeting in April and
22 the meeting in June?

23 A. I believe so.

24 Q. Okay. Did the meeting in June take place at
25 around the last day of school?

1 A. It was very close to the very end of school.

2 Q. You mentioned the curriculum committee before.
3 Was the curriculum committee at the meeting in June?

4 A. Yes.

5 Q. Who else was there?

6 A. The curriculum committee at that time consisted
7 of Mrs. Harkins, Mr. Buckingham, and Mrs. Casey Brown,
8 and I believe at that meeting, Alan Bonsell attended,
9 who was at that point president of the school board. He
10 was at some of the curriculum meetings.

11 Q. You were, obviously, there. Who else was there
12 from the science department?

13 A. The rest of the biology teachers, Rob Eshbach,
14 Jen Miller. I'm not sure if Mr. Linker was there. He
15 also teaches biology. But on one occasion, I know he
16 was ill, and he's also a coach.

17 Q. Was Mr. Baksa there?

18 A. Yes.

19 Q. Okay. What was your understanding of the subject
20 of this meeting before the meeting started? What did
21 you think you were going to be discussing going into the
22 meeting?

23 A. The biology book and the adoption thereof.

24 Q. Okay. Did you become aware at some time that Mr.
25 Buckingham had specific concerns about the biology

1 textbook?

2 A. I had assumed so, because he was the one who
3 specifically asked to review the new book, so I assumed
4 he had some concerns or questions.

5 Q. Did you have any discussion with Mr. Buckingham
6 at this meeting about the mural?

7 A. The topic of the mural came up. Mr. Buckingham
8 had made a statement that the new textbook was, if you
9 will, laced with Darwinism, preceding this meeting.
10 When he evaluated the textbook, which he had given us a
11 written copy of what he had enumerated by page and where
12 his concern was, certainly the word Darwin appeared in
13 more than one place.

14 The other thing that came up was the fact that
15 there is a perception that we taught, man comes from a
16 monkey. And when the word man and monkey came up, I
17 asked him specifically, does this have anything to do
18 with the mural that disappeared out of the room? He
19 just kind of looked at me.

20 And I said, furthermore, it has come to my
21 attention that at a board meeting earlier in the spring,
22 Mr. Buckingham had a picture of that mural, that
23 somebody in the audience saw him show to the other board
24 members. I specifically asked him where he had obtained
25 that picture.

1 Q. What did he answer?

2 A. He did not answer me at all.

3 Q. At that meeting or in that discussion at the
4 meeting, did he acknowledge having witnessed the
5 destruction of the mural?

6 A. I do not remember that.

7 Q. I'm going to show you an exhibit. Bear with me a
8 second.

9 MR. SCHMIDT: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 BY MR. SCHMIDT:

13 Q. Mrs. Spahr, I put in front of you a binder of
14 exhibits. I've turned the page to Plaintiffs' Exhibit
15 132. Do you have that in front of you?

16 A. Yes, I do.

17 Q. Do you recognize this document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It was the commentary of Mr. Buckingham after he
21 had reviewed the teacher's edition of the 2002 Miller
22 and Levine book.

23 Q. When you testified a moment ago that the specific
24 concerns that Mr. Buckingham had written down included
25 references to Darwin, is this the document you were

1 referring to?

2 A. Yes, it was.

3 Q. And did you have a discussion of these concerns
4 of Mr. Buckingham at this meeting?

5 A. Yes, and we did try to point out to him that some
6 of his concerns had to do with the fact that there were
7 things written in the margin of a teacher's edition and
8 there were suggested activities in the teacher's edition
9 that the students would never see. They were not there
10 and teachers would not necessarily use those
11 suggestions.

12 Q. Who took the lead in presenting this response by
13 the science teachers to Mr. Buckingham's concerns?

14 A. Jen Miller.

15 Q. Did you attend a meeting of the school board on
16 June 14th?

17 A. I did.

18 Q. Do you recall Charlotte Buckingham making a
19 statement during the open floor session of that meeting?

20 A. Very clearly.

21 Q. What do you recall?

22 A. She stood up and quoted enumerable verses from
23 the Book of Genesis, which is in the Bible.

24 Q. What was your understanding of the issue before
25 the board that Mrs. Buckingham was speaking to when she

1 made this statement?

2 A. The controversy over this biology book and its
3 presentation of evolution, and certainly people in the
4 community who felt that creationism or creation-science
5 should be given equal time was certainly within the
6 community, and there were many people at that meeting
7 who addressed the issue of their own opinions during
8 public comment, she being one.

9 Q. Let me turn to the board members.

10 A. Okay.

11 Q. Do you recall whether Mr. Buckingham made any
12 statements during the meeting on June 14th on these
13 issues?

14 A. Several.

15 Q. What do you recall him saying?

16 A. In the interim of the meeting, Mr. Buckingham
17 made the statement, 2000 years ago, someone died on the
18 cross, and, in essence, it's time for us to stand up to
19 be counted. This particular country was founded on
20 Christianity, and the separation of church and state as
21 outlined in the Constitution was a myth.

22 Q. Did the board approve the purchase of the biology
23 textbook at the June 14th meeting?

24 A. No, they did not.

25 Q. Do you recall a meeting in July with Mike Baksa

1 and Jen Miller on a new edition of the biology textbook?

2 A. Yes, I do.

3 Q. During that meeting, did you participate in
4 comparing the 2004 edition and the 2002 edition?

5 A. I was the recorder.

6 Q. Did you review all the parts of the two
7 textbooks?

8 A. No.

9 Q. What parts did you review?

10 A. Only the chapter dealing with evolution.

11 Q. At that meeting in July, were you in Mr. Baksa's
12 office?

13 A. We were actually in Dr. Nilsen's office.

14 Q. Was Dr. Nilsen present?

15 A. He would float in and out.

16 Q. Did you see at that meeting a book called Of
17 Pandas and People?

18 A. I did.

19 Q. Were you given a copy of it at that meeting?

20 A. I was not.

21 Q. Was there only one copy available?

22 A. I don't know that at that time, but I was not
23 given a copy of it at the time.

24 Q. Did you eventually read any part of the book Of
25 Pandas and People?

1 A. Yes.

2 Q. When did you do that?

3 A. Sometime either August or September, and I only
4 read the overview.

5 Q. I'll come back to that in a minute.

6 A. All right.

7 Q. Did you attend a meeting of the board on August
8 2nd? And by the board, I mean the school board?

9 A. I did not.

10 Q. Did you learn after that board meeting that the
11 purchase of the 2004 edition of the biology book had
12 been approved?

13 A. I learned that there was a controversy over the
14 approvment -- of the approval of that biology book.

15 Q. Did you learn that the action was taken at the
16 end of the meeting, whatever the controversy was, to
17 approve the purchase?

18 A. Yes.

19 Q. Okay. Did you have a meeting with the curriculum
20 committee on August 30th?

21 A. We did.

22 Q. Jen Miller was there?

23 A. Rob Eshbach.

24 Q. Mr. Buckingham?

25 A. Yes.

1 Q. Other members of the committee?

2 A. I believe Mr. Reedle was present, and I believe
3 Alan Bonsell was there as well.

4 Q. What was the subject matter of that meeting as
5 you recall? Was it using Pandas?

6 A. It had to do with an administrative
7 recommendation that Pandas and People would now become a
8 reference book in the classroom as opposed to what the
9 original proposal was in the August board meeting that
10 was suggested by Mr. Buckingham, and that was that it
11 would be a companion book for students to have along
12 with the Miller and Levine book.

13 Q. Was the science department agreeable to the
14 compromise, as you described it, to use the Pandas book
15 as a reference?

16 A. We did agree to it. We felt we were trying to
17 compromise to resolve this conflict.

18 Q. Do you know how many copies you were to get?

19 A. 60.

20 Q. Was there any discussion at the meeting of August
21 30 about changing the curriculum?

22 A. None at that time. We didn't know anything about
23 that.

24 Q. Did you attend a meeting of the school board on
25 August 18th?

1 that she read the statement verbatim and that she cannot
2 recall what she said at this time, I have no objection.

3 MR. SCHMIDT: I don't think the last part is
4 a necessary predicate, Your Honor.

5 THE COURT: I think the first part is a
6 proper predicate. I agree with Mr. Schmidt. Do you
7 want to ask that question?

8 MR. SCHMIDT: Yes.

9 BY MR. SCHMIDT:

10 Q. Do you understand the comment that Mr. Gillen
11 made, Mrs. Spahr? Did you read this statement as we
12 would read it if we were looking at your handwriting?

13 A. Yes, I did.

14 Q. Word-for-word?

15 A. Pretty much.

16 Q. Well, when you say, pretty much --

17 A. Yes, I did.

18 THE COURT: On that basis, we'll let her
19 read the statement.

20 THE WITNESS: I made the statement under
21 public comment, because the science department wished me
22 to present to the community exactly where the science
23 department stood.

24 I stood up and said, my name is Bertha
25 Spahr. I am a tax payer in this district, and I am a

1 chairman of the science department. This has been a
2 long and tiresome process of about a year and a half,
3 obviously referring to this curriculum issue involving
4 at that point intelligent design and evolution.

5 The science department has made every effort
6 to compromise with the Board curriculum committee in the
7 following areas:

8 Number 1, we agreed to point out the flaws
9 and problems with Darwin's theory origin of species
10 which centers around the change over time.

11 BY MR. SCHMIDT:

12 Q. Let me ask you to just slow down.

13 A. Slow down. We agreed to state other theories of
14 evolution which oppose Darwin's theory and would assist
15 students seeking additional answers on that subject. We
16 agreed to have the book Of Pandas and People available
17 for reference in each biology classroom.

18 And number 4, we do not teach origins of life.
19 Since we are supposedly a standards driven district, we
20 are directed to teach evolution, which is a state
21 standard. The curriculum change, which is about to be
22 voted on this evening, many feel will be railroaded
23 through and has not followed past practice.

24 The board curriculum committee usually has input
25 from the professional staff, the district curriculum

1 committee, community members, and administrators. When
2 this draft was written, no member of the science
3 department was invited to attend.

4 The science department, including all of its
5 members, vehemently oppose the board curriculum
6 committee's draft that include the words intelligent
7 design in our curriculum. It has been deemed unlawful,
8 illegal, and unconstitutional to teach intelligent
9 design, which we thought was a synonym for creationism
10 and/or creation-science along with evolution. And I
11 cited the Supreme Court case of 1987.

12 We are not opposed to having a statement. We do
13 not teach origin of life in the curriculum, since then
14 there would be no reason to include intelligent design,
15 which is origin of life. The book Of Pandas and People
16 has, as its subtitle, origin of life.

17 This inclusion will open the district and
18 possibly its teachers to lawsuits which we feel will be
19 a blatant misuse of the taxpayers' dollars. We further
20 feel that our many years of professional training and
21 science education has not been considered and appears
22 Mr. Buckingham is only concerned with his own personal
23 agenda.

24 At that point, I stopped, turned to Mr.
25 Buckingham, and asked him, Mr. Buckingham, are you going

1 to direct my teachers to teach intelligent design if it
2 appears on the written curriculum? He did not respond,
3 I might add.

4 If so, that places them in a no-win situation.
5 They now have two choices; to defy the directive of a
6 school board or to go into a classroom and commit what
7 they believe to be an illegal act.

8 My last statement was to look at them and say, I
9 challenge you to delay the vote on this issue until we
10 again can attempt to resolve this in a compromise
11 beneficial to all concerned and avoid these possible
12 lawsuits.

13 Q. Thank you. Did the board delay?

14 A. No.

15 Q. Did they adopt a new curriculum?

16 A. They did.

17 Q. Did it mention intelligent design?

18 A. Yes, it did.

19 Q. And Pandas arrived one day, is that right?

20 A. Yes, they did.

21 Q. Did you receive the shipment of Pandas?

22 A. I did.

23 Q. Why, because you were science department head?

24 A. Because I was department chair.

25 Q. When those books arrived, what was your

1 understanding of what was to be done with them?

2 A. I was directed in a memo to unpack them, count
3 them, stamp them, and number them.

4 Q. Who gave you that memorandum?

5 A. I do not know whether it came from Mr. Reegle. I
6 believe it was from Mr. Reegle.

7 Q. He was the school principal?

8 A. He was then the school principal, yes.

9 Q. Did you unpack the books?

10 A. I did.

11 Q. Did you find any materials in the boxes other
12 than the Panda books?

13 A. Yes.

14 Q. What did you find?

15 A. I found a catalogue from the company from whom
16 they had purchased them.

17 MR. SCHMIDT: Your Honor, I'm going to hand
18 the witness the live copy of what has been marked as
19 Plaintiffs' Exhibit 144.

20 THE COURT: All right.

21 BY MR. SCHMIDT:

22 Q. Mrs. Spahr, I'm showing you what has been marked
23 as Plaintiffs' Exhibit 144. Is that the catalogue you
24 found in one of the boxes with the Panda books?

25 A. It is.

1 Q. Would you turn to page 29? Let me go back a
2 second. I'm jumping ahead. I want to establish
3 something, please. You have the catalogue in front of
4 you, and it's on the screen, but let me ask you whether,
5 ask you to read the title on the catalogue?

6 A. It says, home science catalogue, the 10th
7 anniversary catalogue. Home training tools for
8 strengthening home schools with practical science tools.

9 Q. Okay. Now turn to page 29. Is there a title on
10 this page?

11 A. There is.

12 Q. What is the title?

13 A. The title is creation-science.

14 Q. And under that heading, do you find a reference
15 to the book Of Pandas and People?

16 A. I do, in the second column.

17 Q. Did you eventually stamp the books and place them
18 in the classrooms?

19 A. I did not.

20 Q. What happened to them?

21 A. They were taken to the library somewhere around,
22 I believe, December.

23 Q. Who took that step?

24 A. Mr. Baksa.

25 Q. At some point after the October 18 meeting, did

1 you receive a draft statement that was to be read by
2 your science teachers in biology class?

3 A. Yes.

4 Q. What did you do with that?

5 A. We were directed to correct it for any scientific
6 inaccuracies so that basically what was written there
7 would not be received inappropriately by the students
8 that it was to be read to.

9 Q. Did you ask any member of the teaching staff to
10 take on that chore?

11 A. Yes, I did, Jen Miller.

12 Q. Okay. Did you agree with the changes she
13 proposed?

14 A. I am not authority in biology, and I assumed that
15 she was professional enough to have done it, and it was
16 submitted that way.

17 Q. Now at some time in November, there was a press
18 release issued by the school district about the
19 background, if you will, of the new curriculum. Do you
20 recall that?

21 A. Yes, I do.

22 Q. Would you look at the document behind tab P-104?
23 Have you found that?

24 A. Yes.

25 Q. Okay. This is Plaintiffs' Exhibit 104. Do you

1 recognize it?

2 A. Yes.

3 Q. What is it?

4 A. It is the press release for the biology
5 curriculum.

6 Q. If you would look down towards the bottom of that
7 first page, there is a paragraph just above the indented
8 material that starts, in coordination. Do you see that?

9 A. Yes, I do.

10 Q. Is it an accurate statement, in your view, to say
11 that the procedural statement that appears in this
12 release was developed in coordination with the science
13 department teachers?

14 A. No, it is not.

15 Q. Why not?

16 A. Because we had no input in this. The press
17 release was handed to us at the close of the day after
18 it had appeared in the newspaper.

19 Q. Let me ask you to think about that statement in a
20 slightly different way. Did the teachers have a
21 coordinating role in the development of the statement
22 that was to be read to the students in biology class?

23 A. No. We amended it for scientific accuracy so
24 that we could not be deemed insubordinate.

25 Q. When you became aware of that press statement,

1 did you and the other members of the department take any
2 action?

3 A. I believe there was an additional statement that
4 was released to the news media via our association.

5 Q. Okay. Let me ask you to turn to tab P-106. Do
6 you recognize that document?

7 A. I do.

8 Q. What is it?

9 A. This was a document that was sent to Dr. Nilsen
10 explaining to him our unhappiness with the fact that in
11 coordination with the science department appeared in
12 that document which allowed the public to think that we
13 had implementation in the document that appeared. And
14 we did not.

15 Q. This document that appears as Exhibit 106 has the
16 signatures of a number of teachers or apparent
17 signatures of teachers in the high school?

18 A. That's correct.

19 Q. Did you sign this document?

20 A. I did.

21 Q. Did the other teachers sign it?

22 A. Yes, they did.

23 Q. Did you have a hand in preparing it?

24 A. Yes.

25 Q. It says in this document that the science

1 department members strongly object to the description of
2 their role in the development of the statement that
3 appears in the press release?

4 A. That's correct.

5 Q. Why did the teachers go along with the
6 recommendation that Of Pandas be put in as a reference
7 book and that certain language be added to the
8 curriculum and that a statement be read to students in
9 particular language? Why did the teachers do that?

10 A. The issue about the Pandas book being served in
11 the classrooms as a reference, we have many references
12 from many different sources. We felt that it serving as
13 a reference was not going to be objectionable and we
14 were attempting to positively compromise to resolve this
15 issue within the department.

16 We never compromised on that issue of putting
17 intelligent design into our curriculum. And that was
18 the reason that I made the statement on October the
19 18th, to assure the public that we were, in fact, not
20 behind that edition.

21 Q. There were words that were proposed to be added
22 to the curriculum that the teachers did accept, isn't
23 that true?

24 A. That is true.

25 Q. Okay. Why were those editions accepted by the

1 teachers?

2 A. The editions?

3 Q. Not including intelligent design?

4 A. Okay. Where we got to the end of that, we agreed
5 that we would make the students aware of the gaps and/or
6 flaws in Darwin's theory and other theories of
7 evolution. And we had a period at the end of evolution.
8 We also recommended that Of Pandas and People as the
9 reference source be removed from the right-hand side of
10 the curriculum.

11 We did agree that the part at the bottom, which
12 was given to us, we were told from Alan Bonsell that
13 origins of life would not be taught, we agreed to
14 accept.

15 Q. Okay. Was this another of what you referred to
16 earlier as a compromise?

17 A. Yes.

18 Q. Was this something that the teachers initiated or
19 was the compromise a response to an initiative from
20 someone else?

21 A. I believe this was something that we sent back
22 and forth. When we received the original draft, which
23 was somewhere in the early part of October, we looked at
24 it, saw intelligent design in our curriculum, Of Pandas
25 and People in the right-hand side as a reference, and

1 immediately amended the curriculum the way we, as the
2 science professionals, felt it should be and sent it
3 back to Mr. Baksa to be reviewed by the curriculum
4 committee.

5 Q. When you asked Jen Miller to make -- to review
6 and, if necessary, make some proposed changes to the
7 statement to be read to students, did you view that as a
8 compromise?

9 A. My area of expertise is not biology, so I'm not
10 sure I can answer that question. Jen Miller could
11 answer that question as to whether she felt it was a
12 compromise from the biology teachers.

13 Q. Let me ask the question in a different way.

14 A. Okay.

15 Q. Why did you ask Jen Miller to review that
16 statement?

17 A. Because she is the one who is the most senior
18 member of the biology department and the one that had
19 the greatest knowledge in that field.

20 Q. Were you asked by anybody in the administration
21 to have someone review that statement?

22 A. No, but it is implied, as my role as a department
23 chair, I am a facilitator to get a job done.

24 Q. If Mike Baksa asked you to have someone look at
25 that statement for scientific accuracy, did you believe

1 you were in a position to say, no, we won't?

2 A. No, I was not.

3 Q. If Mike Baksa said, we think you ought to put the
4 Pandas books in the classroom as reference material,
5 were you in a position to say, no, we won't?

6 A. Probably not.

7 Q. During the entire consideration of the change to
8 the curriculum, did anyone on the board ever articulate
9 to you an explanation for why there had to be a change
10 to the curriculum?

11 A. No.

12 Q. Did anybody ever explain to you why that change
13 would improve science education in the Dover Area School
14 District?

15 A. No.

16 MR. SCHMIDT: That's all I have on direct,
17 Your Honor.

18 THE COURT: All right. We were going to go
19 until 4:30, and I can't imagine -- or I would imagine
20 you want more than 10 or 15, minutes even if we went
21 overtime for your cross. So this might be an
22 appropriate time to end, unless you want to start your
23 cross for the balance of the day. What's your pleasure?

24 MR. GILLEN: I'd rather do it at once, Your
25 Honor.

1 THE COURT: And that makes sense to me.
2 Anything else from counsel before we adjourn for the
3 week? All right. We will then stand in recess today.
4 We'll pick it up with the witness's cross examination.
5 We will reconvene on Wednesday. Our next trial day will
6 be Wednesday, October the 12th, at 9:00 a.m. We will
7 not sit Thursday because of the holiday next week. We
8 will sit Friday as well for a full day on Friday. So
9 we'll have two trial days next week, Wednesday and
10 Friday. And you can prepare your witnesses for those
11 days accordingly. If there's nothing else, we'll stand
12 in recess until then. Thank you all.

13 (Whereupon, the proceeding adjourned at
14 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.

/s/ Wendy C. Yinger

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