

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

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

AFTERNOON SESSION

TRANSCRIPT OF PROCEEDINGS
OF BENCH TRIAL

Before: HONORABLE JOHN E. JONES, III

Date : October 20, 2005

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

COUNSEL PRESENT:

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For - Plaintiffs

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JULIE SHOTZBARGER, ESQ.

For - Defendants

Lori A. Shuey, RPR, CRR
U.S. Official Court Reporter

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I N D E X

WITNESSES

<u>For - Defendants:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dr. Richard Nilsen	3			

1 THE COURT: Good afternoon to all of you.
2 We are here for our somewhat abbreviated, half-day
3 afternoon session of this trial.

4 Now, I have the exhibits from Professor
5 Behe's testimony, but if you'd like -- and this is
6 certainly fine with me -- we could just proceed to
7 have the testimony and we could save this for a later
8 point in time. That's perfectly all right with me. I
9 see nods.

10 MR. GILLEN: Yes.

11 THE COURT: No shakes of the head. So with
12 that, why don't we get right into the testimony, and
13 you may call your next witness.

14 MR. GILLEN: Thank you, Judge. The defense
15 calls Dr. Richard Nilsen.

16 DR. RICHARD NILSEN, called as a witness,
17 having been duly sworn or affirmed, testified as
18 follows:

19 THE CLERK: State your name and spell your
20 name for the record.

21 THE WITNESS: Richard Dean Nilsen. Richard,
22 R-i-c-h-a-r-d, Dean, D-e-a-n, Nilsen, N-i-l-s-e-n.

23 DIRECT EXAMINATION

24 BY MR. GILLEN:

25 Q. Good afternoon, Dr. Nilsen.

1 A. Good afternoon.

2 Q. You're here to give your testimony in this
3 case. Let me ask you, are you currently employed?

4 A. Yes.

5 Q. Where at?

6 A. Dover Area School District.

7 Q. Would you give us just an idea who you are
8 as a person, your family status. Are you married?

9 A. Yes.

10 Q. And you have children?

11 A. One child 21 years old.

12 Q. How about your educational background, would
13 you briefly describe that for us, please?

14 A. I have an undergraduate degree, BA in
15 history at Gordon College, received my master's at
16 Shippensburg University in education administration,
17 and I have a doctorate in education administration
18 from Temple University.

19 Q. And if you would, please sketch your
20 employment background before coming to Dover.

21 A. I began my career at Dover -- I'm sorry,
22 Derry Township School District as a social studies
23 teacher. My first administrative position was at Big
24 Spring School District as assistant principal/athletic
25 director. I was then elevated to principal at the

1 high school at Big Spring. I also was a middle school
2 principal at Northern York School District, then
3 director of curriculum instruction at Big Spring, and
4 assistant superintendent at Dover, and then eventually
5 my current position, superintendent of Dover.

6 Q. And when did you come to Dover Area School
7 District?

8 A. School year 1998-99.

9 Q. And what was the first capacity in which you
10 were employed?

11 A. Assistant superintendent.

12 Q. And your current position is?

13 A. Superintendent.

14 Q. Okay. Give us an idea for the general range
15 of your duties as superintendent.

16 A. My primary responsibility is implementation
17 of board actions, developing the agenda, personnel,
18 budget development, and overseeing the student and
19 faculty procedures.

20 Q. All right. Well, with that said, I think
21 there's no mystery as to why you're here. We may as
22 well begin that story from your perspective.

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

25 THE COURT: You may.

1 MR. GILLEN: Thank you.

2 BY MR. GILLEN:

3 Q. Rich, I'd ask that you open that binder I've
4 just provided to you and direct your attention to
5 Defendants' Exhibit 288.

6 A. I have that.

7 Q. We've seen this document before in the
8 trial, and I'd like you to say, do you recognize this
9 document?

10 A. Yes, I do.

11 Q. What is it?

12 A. It's the minutes I authored from the Dover
13 Area School District board administrative retreat for
14 January 29th, 2002.

15 Q. You just called it "minutes." Are they
16 minutes, Rich?

17 A. They're more my notes.

18 Q. Okay. I want to get a sense for how this
19 document was generated. But before I do that, I want
20 to describe briefly how this document came to our
21 attention in this litigation. Tell the Court how you
22 found this document and turned it over to me.

23 A. This past summer, after coming back from
24 vacation, with the summer being somewhat slow, it
25 gives an opportunity for administrators to go through

1 and clean out their files and update items, and in my
2 cleaning out of files, I came across these two or
3 three documents I submitted.

4 Q. And one of those is Defendants' Exhibit 288?

5 A. That is correct.

6 Q. If you look at 288, there are three pages.

7 I just want to make sure those are the three pages you
8 turned over to me. Four pages, it looks like.

9 A. Yes.

10 Q. Prior to finding this document, did you have
11 any recollection of Alan Bonsell ever mentioning the
12 term "creationism" to you?

13 A. No.

14 Q. Let me ask you this. What did you do as
15 soon as you found this document?

16 A. Contacted you, counsel.

17 Q. Okay. Now, I want to give the Court a sense
18 for how the document was generated. It has a date,
19 January 9th, 2002. Can you tell us if this document
20 was generated in connection with the meeting?

21 A. Yes.

22 Q. Describe that meeting.

23 A. My first week as superintendent we decided
24 to have a dinner where we invited all the new board
25 members and current board members and administrators

1 where we ended up having a dinner for about an hour,
2 where the administrators and board got together
3 socially.

4 And then we ended up having a -- kind of a
5 this-is-what-the-school-is-doing presentation of where
6 each administrator had an opportunity to talk about
7 what tasks they were involved in. And then at the
8 very end, we ended up having a quick go-round for the
9 board.

10 Q. Let me ask you just about the general
11 purpose of the meeting. Did you give the meeting a
12 name?

13 A. Board administrative retreat.

14 Q. And was this in place when you came to
15 Dover, or did you put this meeting in place?

16 A. I put it in place.

17 Q. And what was your purpose in doing so?

18 A. I think two or three reasons. The first
19 reason was get acquainted. One of the strategic plan
20 initiatives was team-building, and we knew that with a
21 new school board coming on, that we needed to develop
22 a team concept between administrators and the board.

23 Secondly, we were looking, quite honestly,
24 to boast about what the administrators were doing
25 throughout the district and also to take a look at

1 what future tasks we were planning on doing.

2 Q. As you sit here today, do you have a sense
3 for how long this meeting on January 9th, 2002 took?

4 A. Most people would say too long, but I would
5 say about three and a half hours.

6 Q. Okay. You look at Exhibit 288 here, this
7 document that has the Bates Stamp Number 3968 at the
8 foot of the page, the lower right-hand corner, and I
9 want to get a sense for specifically how this list was
10 generated. Would you describe how the information
11 that's reflected in this document was communicated to
12 you?

13 A. After the administrators were done, the
14 board then had an opportunity to state anything that
15 they wanted to, and we went around the table, and each
16 board member had about a minute or two.

17 Q. And what did they do with that minute or
18 two?

19 A. They ended up stating comments or issues.

20 Q. And I take it you took notes based on what
21 they mentioned?

22 A. Yes.

23 Q. I'd ask you to turn to the next page of
24 Exhibit 288 with the Bates Stamp Number 3969 in the
25 lower right-hand corner. Look at that. Do you

1 recognize that document?

2 A. Yes, I do.

3 Q. What is it, Rich?

4 A. It's the agenda for the subsequent board
5 administrative retreat on March 26th, 2003.

6 Q. Now, you've mentioned that this agenda is
7 for a meeting on March 26th, 2003. Would an agenda
8 similar to this have been prepared for the 2002
9 meeting?

10 A. Yes.

11 Q. Do you have that document, Rich, the agenda
12 for the 2002 meeting?

13 A. Do I have it with me?

14 Q. Yes. Do you have it?

15 A. No.

16 Q. Okay. Let me ask you this. If you look at
17 the page that's stamped 3969, you'll see it has an
18 Item Roman VI. Would you look at that?

19 A. Yes.

20 Q. What's the heading for that section of the
21 meeting on March 26th, 2003?

22 A. Roman Numeral VI is Board Feedback and Items
23 of Interest.

24 Q. Is that the section of the retreat that
25 produced the listing we have as Page 3968 for the

1 meeting in January of 2002?

2 A. No.

3 Q. I understand, but was that the same portion
4 of the meeting, Board Feedback and Items of Interest?

5 A. Yes.

6 Q. Okay. Now, if we turn our attention back to
7 Exhibit 288, at the page marked 3968, I want you to
8 take a look at each of the board members. Just get a
9 sense for what their items of interest were and, you
10 know, what importance they took on in this 2002 year
11 or thereafter.

12 If you look at the first letter, it's letter
13 A, and that's Mrs. Brown. Is that Carol known as
14 Casey Brown?

15 A. Yes.

16 Q. And there's --

17 THE COURT: Mr. Gillen, you're on your 288.
18 Is that right?

19 MR. GILLEN: That's correct, Your Honor, at
20 Page 3968, the first page of that exhibit.

21 THE COURT: Liz, where is -- I'm up to 281,
22 Volume 7.

23 MR. GILLEN: Your Honor, you correctly note,
24 these were late additions.

25 THE COURT: Should that be in the 281 book?

1 MR. GILLEN: It should. It should be in
2 Volume 7, Liz, and should be properly tabbed.

3 THE COURT: If you're not going to put it on
4 the screen, let me make sure I have it in front of me.

5 MR. GILLEN: Sure.

6 THE COURT: You can proceed.

7 MR. GILLEN: Thank you.

8 BY MR. GILLEN:

9 Q. If you look under Mrs. Brown, there are a
10 number of items there, Rich. Would you read them for
11 the record?

12 A. Mrs. Brown?

13 Q. Yes.

14 A. Full-day kindergarten, block schedule,
15 intermediate school, board reps, three-year policy
16 review, discipline policy, pathways, PE credit for
17 sports.

18 Q. As we sit here today, do you have a
19 recollection of at least some of those topics that are
20 listed under Mrs. Brown's name?

21 A. Yes.

22 Q. Tell me what you can about the full-day
23 kindergarten option.

24 A. One of the options and one of the reasons we
25 instituted this was to actually develop partnerships

1 administratively in things that we wanted to do. And
2 one of the things administratively we wanted to do was
3 begin research and implementation of a full-day
4 kindergarten. So under Mrs. Brown, she has listed
5 full-day kindergarten, so I remember very specifically
6 the conversations subsequent to this that I had with
7 her on that.

8 Q. And did that issue that she raised produce
9 action in the coming year?

10 A. Yes. In fact, within months, she was
11 involved with us in researching and eventually
12 developing and currently implementing full-day
13 kindergarten throughout the district.

14 Q. How about the second item under her name,
15 block schedule?

16 A. Yes. Her concern was the intermediate
17 school had block scheduling, and subsequent to this
18 conversation, we eliminated it.

19 Q. What about the third item, board reps?

20 A. I cannot tell you what that refers to. I
21 don't remember.

22 Q. How about the three-year policy review?

23 A. Her biggest issue when she came on the board
24 was the fact that she had gone to a weekend seminar
25 that stated that we ought to have policies update --

1 updated every three years. And it was one of my
2 initiatives as a new superintendent because our
3 policies were 20, if not 25 years old. So one of the
4 challenges she gave us is to make sure that all our
5 policies were current, and that was one of the things
6 that I wanted to do, as well.

7 Q. How about the discipline policy, do you
8 remember anything that Casey Brown said in 2002 about
9 that?

10 A. Not specifically, no.

11 Q. How about pathways?

12 A. Yes. She was not in favor of pathways.

13 Q. How about the PE credit for sports?

14 A. At this time period I can't remember
15 anything specifically she said, although I've had
16 conversations with Mrs. Brown about PE and credit.

17 Q. Okay. Let's just take a quick look at Noel
18 Wenrich. There are some items listed under his name
19 there. The first one, alternative ed, do you remember
20 anything specific about that?

21 A. No.

22 Q. How about discipline policy?

23 A. Yes.

24 Q. Tell me briefly what you remember about that
25 item.

1 A. Mr. Wenrich wanted consistent discipline
2 policies for all students.

3 Q. How about the drug policy, Item 3?

4 A. I don't remember anything about the drug
5 policy. I do remember him talking about and
6 requesting that we research the drug dog initiative.

7 Q. Did that ever issue an action?

8 A. Yes.

9 Q. How about the three-year policy review?

10 A. I believe he was echoing Mrs. Brown's
11 comment that we ought to upgrade and update all of our
12 policies.

13 Q. Let's look at Alan Bonsell. You'll see
14 there that it's already been highlighted in this
15 trial. Under his name, the first item is creationism.
16 As you sit here today, do you remember Mr. Bonsell
17 saying anything to you about creationism at this
18 retreat meeting on January 9th, 2002?

19 A. No.

20 Q. How about prayer?

21 A. No.

22 Q. Do you remember anything he said about the
23 need for administration to work as a team?

24 A. No.

25 Q. How about curriculum?

1 A. No.

2 Q. How about uniforms?

3 A. No.

4 Q. Well, you know, let me ask you this, Rich,
5 because I think it's a fair question. You've been
6 asked and will be asked again, you know, tell the
7 Judge why it is that you remember some of these things
8 but you don't remember others.

9 A. Well, I'll state it in a number of fashions,
10 but first of all, each of these had a relative
11 emphasis, meaning when we began the school year, there
12 was an emphasis on certain things that needed to be
13 completed. Mr. Bonsell had specifically been elected
14 to the board -- at least his campaign was dealing with
15 the high school project.

16 The prior board had developed, gone out on
17 bids, and had actually ended up with all but bid
18 acceptance. The new board came in, and Mr. Bonsell's
19 main responsibility was the building project. And
20 almost to exclusiveness, Mr. Bonsell and I, along with
21 Mr. Wenrich, worked very closely on the building
22 project. So our conversations were almost totally
23 exclusive to the building project.

24 Q. And let me ask you about that, Rich. This
25 is the January, 2002 period. Were there specific

1 projects that loomed large for you as a superintendent
2 in Dover at this time?

3 A. Yes. This meeting on the 4th was my first
4 week on the job, as well as the prior superintendent
5 had retired and the board took six months to hire a
6 replacement. So in the spring, I was basically
7 without an assistant in a new position with a building
8 project and two or three priorities that I had chosen,
9 along with the building project, to concentrate on.

10 Q. Let's flip the page here, still on Exhibit
11 288, but go to 3969, which is the agenda for the
12 March 26th, 2003 meeting. And I just want you to,
13 again, briefly describe how this document was
14 generated.

15 A. Bates Stamp 3969?

16 Q. Correct.

17 A. Similar fashion as the 2002 agenda. It
18 would have been where we had -- that would be the
19 second board administrative retreat where we ended up
20 bringing in board members, as well as administrators,
21 for dinner. You can see where we had the welcome and
22 then the dinner.

23 And then we ended up having an
24 administrative go-round on accomplishments. As I
25 alluded to before, it ran later than expected. We

1 asked each of the administrators to have three
2 minutes, and I think most of them took seven minutes
3 because they were so proud of what they were doing.

4 And then, again, at the end of the evening
5 we asked the board to, once again, as in the previous
6 year, to go around and give a one- or two-minute quick
7 comment.

8 Q. Okay. If we look at the first document I
9 showed you, these issues from 2002, and then we look
10 at the agenda for 2003, do you see points of contact,
11 points of continuity, between these two documents
12 which, to you, reflect the priorities of board
13 business at that time?

14 A. Yes.

15 Q. Just give us an idea for what some of those
16 are based on your recollection of what was looming
17 large at this meeting on March 26th, 2003.

18 A. Once again, I think boards are consistent in
19 their thoughts of discipline and budget and finance,
20 and you'll note that there are issues that board
21 members had brought up in the prior year that continue
22 in the subsequent year.

23 Q. And give us just a quick idea for what some
24 of those are.

25 A. You'll note that Mrs. Brown had an issue

1 with intermediate school block scheduling in 2002. In
2 2003, she had an issue this year with the high school
3 block scheduling, still had an issue with pathways, as
4 well as most of the board continually talked about
5 supporting the middle school or middle level students.

6 Q. All right. If you look down on -- at that
7 document to the items that are N and O, you'll see
8 some reference to curriculum there. Can you recall,
9 Rich, what was the subject of discussion about
10 curriculum at this March 26th, 2003 meeting?

11 A. I'm sorry, could you be more specific?

12 Q. Sure, Items N and O.

13 A. Which Bates?

14 Q. 3969.

15 A. Yes. If you remember, we had talked before
16 about initiatives. We were talking about the extended
17 kindergarten you'll see in D. But it's also at this
18 time period that the science curriculum, the state
19 mandates were coming up and we ended up having
20 individuals, Mrs. Hoppe and Mr. Hufnagel, start
21 reviewing the science standards.

22 Q. Okay. Let's flip to the next page of
23 Exhibit 288. It's got the Bates Stamp Number 3970 on
24 it. And, again, I want to ask you just to give us an
25 idea of how this document was generated, Rich. Do you

1 recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It's my notes on what the board members had
5 said as we went around on the administrative retreat.

6 Q. And, again, what sort of procedure produced
7 these comments that are reflected in this document?

8 A. Similarly in 2002 where they had a minute or
9 two where they could make quick comments.

10 Q. And you took notes based on those comments.
11 Correct?

12 A. Yes, I did.

13 Q. Well, again, for the sake of just trying to
14 place this document in its context, I'm going to ask
15 you to look at some of the items that are listed under
16 the board members' names and see if, as you sit here
17 today, you remember specific comments that they made
18 at this meeting on March 26th, 2003.

19 How about Mr. Wenrich -- the first item for
20 him is K through 12 discipline -- do you have any
21 specific recollection of something he said?

22 A. Yes.

23 Q. What did he say?

24 A. He was very concerned about double standards
25 that we ended up having with students and wanted to

1 make sure that we had -- again, were consistent with
2 our discipline.

3 Q. Look at the rest of the items under his
4 name, 2 through 4. Any of those that you have a
5 specific recollection about?

6 A. Yes, the alignment of technology and
7 curriculum. He was very interested in technology. We
8 had numerous conversations. In fact, he's employed as
9 a technology individual, so he had a background with
10 that, so we had long conversations. I remember very
11 specifically his comments.

12 Q. Apart from that item, do you have any
13 specific recollection of statements he made about the
14 other items listed under his name on this document?

15 A. No, I do not.

16 Q. Let's look at -- the second person listed is
17 Mrs. Callahan. She's got two items there. Do you
18 have a specific recollection of anything that she said
19 relating to those points listed under her name at this
20 meeting on March 26th, 2003?

21 A. No, I do not.

22 Q. Beneath her is Mr. Brown. He's got two
23 items listed under his name. Do you have any specific
24 recollection?

25 A. No.

1 Q. All right. We get Mr. Bonsell again. He's
2 got a number of items listed under there. Let's look
3 at the first one, mandatory EdLine. Do you have a
4 specific recollection about any comments Mr. Bonsell
5 made about that item at this meeting on March 26th,
6 2003?

7 A. Yes.

8 Q. Tell us -- just give us an idea of what you
9 recall.

10 A. He was encouraging -- in fact, I think his
11 specific comment was, as stated there, he wanted more
12 information placed on the EdLine.

13 Q. Item 2 is continue to stress manners, dress,
14 and good behavior, help support parents. Do you
15 remember anything you said along those lines?

16 A. Yes.

17 Q. Give us an idea real quick.

18 A. His emphasis was the frustration parents
19 were telling him that there was a mixed standard at
20 school of where the -- some kids would come to school
21 inappropriately dressed and then tell their parents
22 that everybody else is dressed like that, and he
23 wanted us to be consistent in our dress codes
24 throughout the district.

25 Q. All right. For the moment, let's skip to

1 Item 4 underneath Mr. Bonsell's name, and that's a
2 reference to emphasize American history. Do you
3 recall any comments that Mr. Bonsell made at this
4 March 26th, 2003 meeting?

5 A. Yes.

6 Q. Tell us what you remember.

7 A. Mr. Bonsell and I have had, over the three
8 or four years, extended conversations about American
9 history and the founding fathers. That's why we
10 brought it up. It didn't surprise me because we had
11 had conversations in that area. And specifically his
12 interest is American history, and since my
13 professional background is American history, we had
14 talked about the founding fathers and the emphasis of
15 making sure that's in our curriculum and the
16 Constitution. So when he brought this up, it fit in
17 with the conversations that I had had with him before.

18 I don't remember events more than dates.
19 That actually may have been my editorializing based on
20 the fact that I firmly believe that.

21 Q. Well, you know, let's go back up to Item 3,
22 and there again, as the plaintiffs have highlighted,
23 there's a notation "creationism." As you sit here
24 today, do you remember Mr. Bonsell saying anything to
25 you about creationism during this two-minute go-round

1 session?

2 A. No, I do not.

3 Q. Prior to finding this document, did you ever
4 remember Mr. Bonsell saying anything about creationism
5 to you?

6 A. No. In fact, even finding it in this
7 document, I don't remember those conversations.

8 Q. What do you mean by that?

9 A. Meaning even now, reviewing these, I don't
10 remember either of those conversations or statements.

11 Q. Well, again, I want to ask -- I think it's a
12 fair question. You've been asked before. Why is it,
13 Rich, that there are some of these things that you can
14 remember and others you can't?

15 A. I think it goes back to what I said earlier.
16 There are specific areas of relative interest and
17 emphasis that were going on during this time period.
18 And I was more interested in the building project and
19 how to make sure Mr. Bonsell supported certain aspects
20 of the building project, as well as the budget.

21 Q. Do you know if Mr. Buckingham attended this
22 meeting?

23 A. I know he did not.

24 Q. And do you have an understanding as to why
25 he did not?

1 A. Yes. It was this time we started getting a
2 little bit of feedback that Mr. Buckingham had
3 significant physical issues. I think he's had three
4 or four operations on his knees, as well as I believe
5 at this time period was his first or second time he
6 was hospitalized for substance issues, Oxycontin
7 addiction.

8 Q. Let me ask you, this is the 2003 year, were
9 there any projects that loomed especially large for
10 you as superintendent during this year?

11 A. Without question the building project.

12 Q. Did the building project have any impact on
13 the makeup of the board?

14 A. I would easily estimate that the building
15 project was the major electoral issue that changed the
16 board. In fact, two of the board members, very good
17 board members, ended up resigning over the building
18 project's direction.

19 Q. And why is that?

20 A. Because they didn't like the way the project
21 was headed.

22 Q. How about if you look at the board as -- in
23 the 2003 period in terms of people who were aligned
24 with each other, can you tell me which members
25 resigned?

1 A. The individuals that resigned at this time
2 period were Mr. Larry Snoke and Lonnie Langione.

3 Q. Were there other board members that remained
4 who had been frequent -- should I say board members
5 who shared the convictions of Mr. Langione and Snoke?

6 A. Yes.

7 Q. And who would that be?

8 A. Mrs. Callahan.

9 Q. I'd ask you, Rich, to turn your attention to
10 Exhibit 283.

11 A. I have it.

12 Q. You recognize that document?

13 A. Yes, I do.

14 Q. What is it?

15 A. It's a letter directed to me from Messiah
16 College.

17 Q. And what does the letter relate to?

18 A. It's relating to a Pennsylvania School Board
19 Association's meeting entitled, Creationism and the
20 Law.

21 Q. You said there was a meeting, but look at
22 the letter a little more closely just for the sake of
23 being precise. Was it a meeting or something else?

24 A. My apologies, seminar.

25 Q. Okay. There's a handwritten note in the

1 upper right-hand corner there. Would you read that
2 for the record, Rich?

3 A. Amy, please register me for this seminar and
4 order this book. Rich wants me to attend. Thanks.

5 Q. Is that your handwritten notation?

6 A. No, it is not.

7 Q. Does it reflect something that you did?

8 A. It reflected me directing Mr. Baksa -- or
9 recommending Mr. Baksa to attend.

10 Q. And why did you do that?

11 A. We were looking at the science curriculum,
12 and I knew Mr. Baksa's background was language arts,
13 and I knew he had to develop an understanding of
14 science. And in one of my prior experiences as a
15 director of curriculum instruction during a science
16 implementation, there were a lot of questions that
17 were raised to me concerning evolution and science,
18 and I thought it appropriate that Mr. Baksa gain an
19 understanding of the issues.

20 Q. Well, let me ask you, Rich, did you send
21 Mr. Baksa to this seminar because you thought Alan
22 Bonsell wanted to teach creationism?

23 A. No.

24 Q. Did you ever have any discussion with Mike
25 Baksa about the seminar?

1 A. Yes.

2 Q. Tell us what you recall about that
3 discussion.

4 A. Mr. Baksa returned and communicated to me in
5 a very general sense he had thought it was a very
6 productive seminar.

7 Q. Did he say anything else?

8 A. No.

9 Q. This relates to an item of curriculum. In
10 your capacity as superintendent, do you have a lot of
11 dealings with curriculum?

12 A. No. In fact, I've always benefited from my
13 former superiors. When I was a director of curriculum
14 instruction and assistant superintendent, my
15 superintendents didn't micromanage me and tell me what
16 to do, and I've attempted to do the same with
17 Mr. Baksa. So even though I have a supervisal piece,
18 I've always tried to -- and he has done a good job
19 with that, so I've tried to keep my fingers away from
20 his activities.

21 Q. Let's look next at Defendants' Exhibit 1.
22 Do you recognize that document, Rich?

23 A. Yes, I do.

24 Q. What is it?

25 A. It's a memo to Mr. Baksa, Mr. Larry Redding,

1 Mrs. Bert Spahr from Dr. Trudy Peterman, who was the
2 principal at this time, carbon-copied to me.

3 Q. Do you remember receiving this?

4 A. Yes.

5 Q. Did this memo give you cause for concern?

6 A. Yes.

7 Q. And what was that concern?

8 A. My concern was a process that Dr. Peterman
9 had been involved with in generating this memo.

10 Q. And explain that, Rich.

11 A. We had difficulty with Dr. Peterman to the
12 extent of where she continued to write memos directed
13 to individuals and codifying information, that she did
14 not work with the individual that she had noted in the
15 memo. This was done about administrators, as well as
16 teachers, as well as various department chairs.

17 Q. Rich, I'd ask that you direct your attention
18 to the first paragraph of the memo. First of all,
19 tell us, what's the "re" line on the memo? What does
20 it relate to?

21 A. Creationism as it relates to the approved
22 school board Biology I curriculum.

23 Q. Okay. And then I'd ask you to direct your
24 attention to that first paragraph to the portion of it
25 that begins, Mrs. Spahr explained, and read it through

1 the end of that paragraph.

2 A. Mrs. Spahr explained to Mr. Baksa that in
3 Biology I, one theory of evolution taught is
4 Darwinism. She explained to Mr. Baksa that all
5 biology teachers state that another theory of
6 evolution is creationism, but creationism, per se, is
7 not taught since it is not addressed by the standards.
8 Mr. Baksa further stated to Mrs. Spahr on March 31st,
9 2003, that this board member wanted 50 percent of the
10 topic of evolution to involve the teaching of
11 creationism.

12 Q. Let me ask you a few questions about that,
13 Rich. When you got this memo, did you read it?

14 A. Yes.

15 Q. Were you concerned when you read what
16 Dr. Peterman said about the teacher's practice in
17 biology class mentioning creationism?

18 A. No.

19 Q. Why not?

20 A. Because they weren't teaching creationism.

21 Q. Let me ask you, did you ever discuss with
22 Mr. Baksa the assertion made in the last sentence of
23 that memo, that paragraph?

24 A. Yes.

25 Q. And what did you learn?

1 A. I learned that he did not say that.

2 Q. Let me ask you, did you have -- did
3 Dr. Peterman have a habit of taking things out of
4 proportion?

5 A. Yes.

6 Q. Had that produced any impact on her job
7 performance reviews?

8 A. Yes, it did.

9 Q. At the same time let me ask you this. Did
10 you punish Dr. Peterman for the content of this memo?

11 A. No.

12 Q. You say, Rich, that you learned that
13 creationism, per se, is not taught. When you say
14 you're not concerned that the teacher was violating
15 the law, what's the basis for that position?

16 A. Teaching is a very specific art that
17 generally has four components. The first component is
18 very specific behavioral objectives. The second
19 component is very specific student actions. The third
20 would end up entailing materials. And the fourth
21 would be a very specific assessment relationship to
22 the behavioral objectives.

23 Q. When you read this memo, Rich, did it ever
24 occur to you that the teachers were delivering a
25 mini-lecture on creationism?

1 A. No.

2 Q. Let's look at the remainder of 2003. This
3 memo is dated April 1st, 2003. Let me ask you, do you
4 recall any developments touching on proposed changes
5 to the biology curriculum in the remainder of 2003?

6 A. No, I do not.

7 Q. Do you recall any developments touching on
8 the biology text in 2003?

9 A. Yes.

10 Q. What do you recall?

11 A. I recall that the board was looking at
12 fiscal issues. They had been elected to have a
13 fiscally conservative budget, and one of the areas
14 that they looked at was purchasing of the textbooks,
15 science and family consumer science.

16 Q. Looking at this period in 2003, let's focus
17 your attention in the fall, and let me ask you, do you
18 remember hearing comments that students didn't have
19 books during this period?

20 A. Yes, I do.

21 Q. And one of the books was a biology book?

22 A. Yes.

23 Q. Did that concern you?

24 A. No.

25 Q. Why?

1 A. We ended up in -- because of the state
2 standards -- originally our biology was in tenth
3 grade, and we wanted to, because of the test being in
4 tenth grade, move the biology to ninth grade. So we
5 had one year of where we had both our ninth grade and
6 our tenth grade taking biology. And our teachers were
7 very supportive and understood that we couldn't buy a
8 whole class set or a whole grade set just for one
9 year.

10 So what the teachers graciously did was
11 coordinated a classroom set for each of the teachers
12 and then used the textbooks whenever they needed to in
13 the respective classes. So the students did not take
14 home a text because we didn't have enough texts for
15 two grades, but they did use the texts in class.

16 Q. Well, looking, again, at this fall, 2003
17 period, do you recall any comments made about the
18 books not being used?

19 A. Yes. There was a specific board member,
20 Mrs. Harkins, that ended up communicating that she had
21 heard that the teachers didn't like the text and
22 therefore were not using the text.

23 Q. Did she give more detail on the nature of
24 her concern?

25 A. Her concern was, why would we buy texts if

1 they didn't want the texts, as well as, we should wait
2 to make sure that when we do buy a text, it is aligned
3 with the current and new state standards.

4 Q. You've mentioned the curriculum cycle. I
5 just want to get an idea for what that is. Tell us,
6 Rich, what is the curriculum cycle?

7 A. When I came to Dover, the curriculum was
8 reviewed and textbooks were purchased in a haphazard
9 way, so I ended up developing a seven-year cycle of
10 where every year designated a curriculum review and
11 corresponding purchase of textbooks. That way we
12 would not have one year of three or four different
13 adoptions of textbooks and/or miss a review of a
14 textbook adoption.

15 Q. You've indicated that the science texts were
16 up in 2003. Did they come up for review in the
17 ordinary course of the curriculum cycle you've
18 described?

19 A. Yes.

20 Q. Now, does the curriculum cycle relate to
21 text purchase?

22 A. Yes.

23 Q. Tell us how.

24 A. The curriculum is developed, and then the
25 teachers take a look at what companion material -- in

1 most cases it would be a textbook -- would support the
2 updated curriculum. And that would be the time we
3 would purchase the textbooks and materials.

4 Q. Let me ask you this, Rich. If you'd turn
5 your attention back to Defendants' Exhibit 1, I want
6 you to look and see if Dr. Peterman took any action in
7 response to the conversation that you sought to
8 reflect in this memorandum.

9 A. I'm sorry, could you ask that question
10 again?

11 Q. Sure. Look at the memo again and see if you
12 can -- it refreshes your recollection as to anything
13 that Dr. Peterman told the science faculty to do.

14 A. Well, if you look at the bottom half of the
15 memo, she gives very specific curriculum directions.

16 Q. And what are they? Please read them.

17 A. Number 1, if we are a standards-driven
18 school district, can creationism be taught if it isn't
19 addressed by either the state standards or by the
20 approved school board Biology 1 curriculum?

21 Q. Hold on, Rich. Before you begin there, let
22 me just ask you to jump up to the title paragraph, the
23 second paragraph, the heading where she says -- she's
24 asking for direction and read the second sentence of
25 that for the record.

1 A. I advised them to continue to mention that
2 creationism is another alternative theory of
3 evolution.

4 Q. Now, I've got two questions for you there,
5 Rich. First is, again, upon reading that, did you
6 have a concern that your teachers were engaged in
7 unlawful activity?

8 A. No.

9 Q. And why is that?

10 A. Once again, they are mentioning creationism
11 and not teaching creationism.

12 Q. Well, and let me ask you, did you have a
13 concern when you read that statement?

14 A. I had a concern of the process, meaning
15 Dr. Peterman was taking the responsibility of a
16 curriculum director, but as far as the actions of the
17 individual teachers, no.

18 Q. Again, Dr. Peterman is providing directions
19 to the teachers. Was that within her area of
20 responsibility as principal to speak to curriculum?

21 A. No.

22 Q. That brings us to 2004, Rich, and I'd ask
23 you to look at Defendants' Exhibit 2. Do you
24 recognize that document?

25 A. Yes, I do.

1 Q. What is it?

2 A. It's the budget submission for textbooks.

3 Q. And what's the document dated?

4 A. January 5th, 2004.

5 Q. And do you have an idea or can you tell us
6 why you would receive this document?

7 A. The high school is resubmitting requests for
8 biology textbooks.

9 Q. In 2003, the text was put off. Do you
10 recall any concern on the part of the science faculty
11 relating to when their texts would be purchased?

12 A. Yes, they were concerned on two levels.
13 One, they were concerned that if they were not
14 purchased that year, that we would move on to the next
15 cycle and totally skip them and that it would be
16 another seven years before they ended up getting their
17 texts. And, secondly, they were also concerned on
18 getting current and standards-driven texts.

19 Q. Did the board delay the purchase of the text
20 for another cycle?

21 A. No, they did not.

22 Q. And is that why you were receiving this
23 document in January, 2004?

24 A. Yes. The high school principal was directed
25 to resubmit the biology and science and family

1 consumer science text requisitions.

2 Q. Did the expressed concern that students not
3 have biology textbooks, which you've mentioned in
4 2003, carry over into the 2004 year?

5 A. I'm sorry, could you ask that question
6 again?

7 Q. You've mentioned that some people were
8 saying the students don't have texts. Was that
9 concern expressed also in 2004?

10 A. Yes.

11 Q. How about the notion that the students
12 weren't using the books, the teachers weren't using
13 the books, was that concern also expressed in 2004?

14 A. Yes.

15 Q. Why are you receiving this document in
16 January of 2004?

17 A. That would be the budget time period.

18 Q. Rich, I'd ask you to look at Defendants'
19 Exhibit 3. Do you recognize that document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's the curriculum advisory council
23 minutes.

24 Q. What is the curriculum advisory council?

25 A. It's a council chaired by the assistant

1 superintendent for curriculum that has, as members,
2 faculty, community members, and administrators.

3 Q. Does the curriculum advisory council have to
4 be consulted prior to curriculum changes pursuant to
5 Dover Area School District policy?

6 A. No.

7 Q. Does the curriculum advisory council have to
8 be consulted prior to text purchases pursuant to Dover
9 Area School District policy?

10 A. No.

11 Q. Did you seek the input of the curriculum
12 advisory council concerning the curriculum change at
13 issue in this case?

14 A. Yes.

15 Q. Were all of Dover's policies regarding
16 curriculum development followed with respect to the
17 curriculum change at issue in this case?

18 A. Yes.

19 Q. If you look at Exhibit 3, Rich, there is an
20 item Roman Numeral IV.

21 A. Yes.

22 Q. If you look at that, there's a reference to
23 the board curriculum committee. Describe what that
24 is.

25 A. The board curriculum committee is a

1 subcommittee of the full board that has three board
2 members on it that review all curriculum prior to
3 submission to the full board, curriculum and
4 textbooks.

5 Q. Okay. And if you look at Item 4, Roman IV,
6 would you look that over, Rich, briefly. There's a
7 reference there to science and family consumer science
8 textbooks. Do you recall an issue about the family
9 and consumer science textbooks at this time?

10 A. Yes, I do.

11 Q. Tell us what you recall about that.

12 A. Specific board members had concerns that the
13 teachers were recommending books that literally were
14 the same as the prior books with the exception of a
15 cover and maybe two or three words through the whole
16 text, basically requesting purchase of a book that was
17 very similar to the book that they currently had.

18 Q. And if you can, in your capacity as
19 superintendent, describe how the board approached text
20 purchases during this period.

21 A. Very frugally.

22 Q. And did they have a series of concerns that
23 they looked at fairly regularly?

24 A. Yes. They ended up, with any purchase of a
25 book, requesting a number of items of information.

1 First of all, they would want to know how long the
2 books had been used, the condition of the books, how
3 many students would be accessing the books, how many
4 books we ended up having, and, in relationship to
5 that, any recommended books, the copyright date of
6 those books, as well as the relationship to the
7 standards.

8 Q. There's a reference in that Item 4 on
9 Exhibit 3 to the science textbooks. Did the board ask
10 the same questions with respect to the science
11 textbooks?

12 A. Yes, they did.

13 Q. This document is dated April 15th, 2004. If
14 we focus your attention on the spring period, did
15 there come a time when a board member provided you
16 with materials that related to the biology curriculum?

17 A. Yes.

18 Q. And who was that?

19 A. Mr. Bill Buckingham.

20 Q. And what did he give you?

21 A. He dropped off to my office two CDs and a
22 book.

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

25 THE COURT: You may.

1 MR. GILLEN: Thank you.

2 BY MR. GILLEN:

3 Q. Rich, I've handed you two DVDs. I'd ask you
4 to identify them for the record.

5 A. One is Icons of Evolution, and the other one
6 is Unlocking the Mystery of Life.

7 Q. Do you recognize these?

8 A. Yes, I do.

9 Q. What are they?

10 A. They're two DVDs and are reflective of what
11 Mr. Buckingham gave me.

12 Q. You've also referenced a book. Do you
13 remember its title?

14 A. No, I do not.

15 Q. That's unfortunate, because I don't have it
16 here right now. Hopefully we'll find it before your
17 testimony is done.

18 Did Mr. Buckingham say anything to you when
19 he handed you these materials?

20 A. Yes. He recommended that I take a look at
21 them.

22 Q. Did you do that?

23 A. No.

24 Q. Did you do anything with them?

25 A. Yes.

1 Q. What did you do?

2 A. I gave them to Mr. Baksa, who is in charge
3 of curriculum. It's his area of responsibility.

4 Q. Did you say anything to Mike when you handed
5 those materials to him?

6 A. I said a board member dropped these off and
7 he probably ought to take a look at them.

8 Q. Rich, I'd ask you to direct your attention
9 to Defendants' Exhibits 6 and 14. Do you recognize
10 those documents?

11 A. Yes.

12 Q. What are they?

13 A. Those are the -- it's a memo from
14 Dr. Peterman to myself and Mr. Baksa reviewing the
15 textbook summary report dealing with the biology,
16 chemistry, and family consumer science textbooks.

17 Q. Okay. Now, if you compare Defendants'
18 Exhibit 6 with Defendants' Exhibit 14, you'll note, I
19 believe, that they're the same document in terms of
20 typewritten text. Is that correct?

21 A. Yes.

22 Q. But Defendants' Exhibit 14 has some
23 handwritten notations on it. Correct?

24 A. Yes.

25 Q. Do you know what those handwritten notations

1 reflect?

2 A. Yeah. Those are the copyright dates of
3 those books.

4 Q. Do you know why that information would have
5 been added to the document which is Defendants'
6 Exhibit 14?

7 A. Yes. As stated earlier, the board would
8 have wanted to know the copyright dates of the books.

9 Q. I'd ask you to direct your attention to
10 Defendants' Exhibit 15. And with that in mind, I'd
11 ask you a few things. First of all, did Bill
12 Buckingham ever speak with you personally about the
13 materials that he had handed to you in the period up
14 through June, 2004?

15 A. No.

16 Q. Did he ever express specific concerns to you
17 as superintendent about the biology text?

18 A. Not to me, no.

19 Q. Do you recognize Defendants' Exhibit 15?

20 A. Yes.

21 Q. What is it?

22 A. It's a list of concerns that Mr. Buckingham
23 gave Mr. Baksa concerning the 2002 Miller and Levine
24 textbook.

25 Q. Did you have any discussions with Mike Baksa

1 about that?

2 A. Beyond the fact of him telling me that he
3 would review those concerns, no.

4 Q. Did Mr. Baksa mention creationism to you
5 when he showed you Defendants' Exhibit 15?

6 A. No.

7 Q. Well, in terms of our increasingly narrow
8 focus on the biology curriculum and biology text, do
9 you recall any other developments in the spring of
10 2004 which touch on that text?

11 A. Yes.

12 Q. Tell me what you remember.

13 A. At the first board meeting -- I believe it
14 was June 7th -- a constituent came to the mic and
15 asked what the status of the biology books were.

16 Q. Who would that be?

17 A. Mrs. Callahan.

18 Q. And what concern did she express?

19 A. She wanted to know what the status of the
20 biology books were and why they were not purchased.

21 Q. Do you remember anything that Bill
22 Buckingham said in response to her inquiry?

23 A. Yes.

24 Q. Tell us what you remember.

25 A. Mr. Buckingham told her that he had concerns

1 with the book because it was laced with Darwinism.

2 Q. Well, prior to this board meeting -- let me
3 ask you first, is this the first board meeting in
4 June?

5 A. Yes.

6 Q. Prior to that board meeting, had you ever
7 heard Bill Buckingham talk about Darwinism?

8 A. Directly, no.

9 Q. How about when he made this comment that the
10 text was laced with Darwinism, did you know what he
11 was getting at?

12 A. No, based on the fact that all biology books
13 are going to be full of Darwinian theory. And I
14 didn't really understand his point based upon the fact
15 that laced with Darwinism, I'm not sure about the word
16 "laced," but all biology books are going to have
17 Darwin in them.

18 Q. Do you remember anything else Mr. Buckingham
19 said at that meeting?

20 A. No.

21 Q. Do you remember anything that any other
22 board member said at this meeting in June?

23 A. No.

24 Q. Up until this time now, this is June -- the
25 first week in June, 2004, did any board member come to

1 you and discuss a desire to teach creationism?

2 A. No.

3 Q. Up until this period, had any board member
4 come to you and expressed a concern that the biology
5 text was laced with Darwinism?

6 A. To me directly, beyond the June 7th comment,
7 no.

8 Q. Well, indirectly, Rich, had any board member
9 come to you and discussed a concern about being laced
10 with Darwinism?

11 A. No, not me.

12 Q. Were you aware of them going to anybody?

13 A. I was aware that Mr. Baksa was in receipt of
14 Mr. Buckingham's Defense Exhibit 5, and apparently
15 that references Darwinism.

16 Q. Okay. But does it reference it being laced
17 with Darwinism?

18 A. No.

19 Q. I'd like you to look at Defendants' Exhibit
20 6 and 14. And I just want to note the date of those
21 documents again for the record. When are they dated,
22 Rich?

23 A. June 8th, 2004.

24 Q. And looking at that period in time and
25 looking at the text purchase cycle that you've

1 described, where in the process does this memo fit?

2 A. It would be about the time for final budget
3 approval and purchase after July 1.

4 Q. Okay. Let me ask you, what do you remember
5 next touching on this dispute about the biology text
6 and curriculum? We've gone through the first board
7 meeting.

8 A. The only thing I could remember would be the
9 next board meeting, which would be July 14th.

10 Q. Okay. Tell us what you recall about that
11 meeting.

12 A. I remember the July 14th meeting had a large
13 attendance. The board, at that time, was
14 contemplating eliminating a high school English
15 position, and Dr. Peterman had encouraged her staff to
16 attend that meeting to support the position. And
17 there were a lot of individuals there in attendance to
18 support the English position.

19 Q. Well, you've linked the attendance at the
20 meeting to a faculty or personnel decision. Was there
21 anything in the makeup of the crowd that led you to
22 draw that inference?

23 A. I would say close to 80 percent faculty
24 members.

25 Q. Now, as the meeting unfolded, tell us what

1 you recall.

2 A. I recall that at public comment period,
3 Mrs. Buckingham came to the podium.

4 Q. And do you remember anything about what she
5 said?

6 A. In a general sense, yes, I remember her
7 reading from the Bible. And her point I never
8 understood. In fact, I felt somewhat sympathetic with
9 the board president because she rambled on. There was
10 no point. And I think he kept waiting for a point so
11 he could gavel her down, and she would pause and then
12 continue. And to this day I have no idea what she was
13 trying to present.

14 Q. Well, let me ask you this. We've said
15 Charlotte Buckingham. Was she the wife of
16 Mr. Buckingham?

17 A. Yes.

18 Q. And was Mr. Buckingham a board member?

19 A. Yes. I think probably the board president
20 was sympathetic to the fact of a spouse of a board
21 member on the podium.

22 Q. As you sat there during this discussion,
23 what was your personal impression with respect to what
24 she was saying and whether it was appropriate?

25 A. On two levels, I never got what her point

1 was, and I'm not sure I would state a reading from the
2 Bible and reflecting on Genesis was appropriate.

3 Q. Let me ask you, was it kind of embarrassing?

4 A. Yes.

5 Q. Do you remember anything else that happened
6 at this June, 2004 meeting?

7 A. A student by the name of Max Pell came and
8 had some comments. He and Mr. Buckingham had an
9 interchange.

10 Q. Do you remember anything about that
11 exchange?

12 A. Not specific comments, no.

13 Q. Looking at the second board meeting in June,
14 do you have any recollection of Mr. Buckingham saying
15 the country was founded on Christianity?

16 A. No. My recollection on all of
17 Mr. Buckingham's religious comments were in the fall.
18 The fall of 2003, we had a former board member come
19 and request the board take a stand on the federal case
20 on the under God pledge. And during that time period,
21 a number of board members had made some comments, and
22 my recollection, that Mr. Buckingham had made some
23 significant religious comments. In fact, subsequent
24 to that, he actually came and apologized for some of
25 the comments he had made publicly.

1 Q. When the second board meeting occurred in
2 June, there was large attendance, did you connect that
3 attendance to the comments that Mr. Buckingham had
4 made at the prior board meeting?

5 A. No.

6 Q. Why not?

7 A. Again, the population, and I knew the
8 majority of the individuals were there based on the
9 position. And I knew historically attendance at board
10 meetings was not reflective on comments, more items on
11 agendas.

12 Q. When you say "population," do you mean
13 attendance at the meeting?

14 A. Yes.

15 Q. Are you referencing the attendance by a
16 large number of faculty?

17 A. Yes.

18 Q. Okay. Do you recall a discussion at this
19 meeting about the need for balance?

20 A. Yes. It was at this time the board started
21 discussing its efforts on the biology curriculum, and
22 a number of board members had discussed their interest
23 in looking at the biology curriculum and making sure
24 that the biology curriculum reflected a balanced view,
25 as well as talking about gaps and problems in the

1 Darwin theory.

2 Q. While they're talking about balance, do you
3 remember any discussion of creationism at this
4 meeting?

5 A. No.

6 Q. Do you recall any specific statements
7 relating to the nature of the balance that was
8 discussed at this meeting?

9 A. I think they were -- there was a discussion
10 of wanting other theories being presented. What
11 specific other theories, I cannot remember.

12 Q. Let me ask you, Rich, to direct your
13 attention to Defendants' Exhibit twenty -- well, let's
14 start with 8. I just want to get that in. Look at 8,
15 if you would, Rich. Do you recognize that document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's a cost analysis of what the board had
19 put in the budget balance, meaning when they did not
20 purchase the textbooks the prior year, they directed
21 me and the business manager to put the unexpended
22 funds in a fund balance for the subsequent year. And
23 it gives the total cost of the request at 34,000,
24 which meant we had a shortfall of 9,000, which meant
25 that's the amount of money we needed to budget to

1 purchase all books.

2 Q. Did this document come to your attention in
3 your capacity as superintendent?

4 A. Yes.

5 Q. And why was that?

6 A. That would be the amount of money we needed
7 to budget for the textbook that year, textbooks that
8 year.

9 Q. If we look at this period here between the
10 second board meeting in June and the first board
11 meeting in July, did any other information come to
12 your attention relating to the biology text on the
13 part of Mr. Buckingham, for example?

14 A. Yes.

15 Q. Tell me what you recall.

16 A. Mr. Buckingham, with Mr. Baksa, had dropped
17 off a document requesting *Of Pandas and People*.

18 Q. Well, before we get there, let me ask you to
19 look at Defendants' Exhibit 22. And if you would,
20 Rich, I'd ask you to direct your attention to the page
21 of Exhibit 22 with the Bates Stamp Number 101 in the
22 lower right-hand corner. There's an item there, Item
23 13. What does that relate to?

24 A. That's curriculum.

25 Q. And if you would, read for the record what

1 you see beneath that.

2 A. 13A, approve the following textbooks for the
3 2004-2004 school year: Prentice Hall *Biology* by
4 Miller and Levine, copyright 2002.

5 Q. Okay. Did Mr. Baksa ever discuss with you
6 Mr. Buckingham's objections to the text prior to
7 putting the purchase of the text on the agenda?

8 A. Yes.

9 Q. And what did he tell you?

10 A. He had told me at that time he thought, in
11 conversations with Mr. Buckingham, that all the items
12 had been addressed.

13 Q. I'd ask you then, Rich, to turn your
14 attention to Defendants' Exhibit 23 and direct your
15 attention to that page of Exhibit 23 with the Bates
16 Number 110 in the lower right-hand corner. If you
17 look under the item for curriculum, do you see
18 approval of the text?

19 A. No, I do not.

20 Q. Do you know why?

21 A. Yes.

22 Q. Tell us.

23 A. The department chairperson, Mrs. Spahr,
24 contacted Mr. Baksa and said that she had received
25 over the summer an updated copyright date of the book

1 for 2004.

2 Q. What was the result of that information on
3 the text approval process?

4 A. We recommended that the board table that
5 action and not purchase a book because we had an
6 updated book.

7 Q. And was that consistent with the board's
8 general focus on the copyright and the currency of the
9 new text?

10 A. Yes. If they could get an updated book by
11 two years, they would be very pleased.

12 Q. So there's a delay in purchasing the text at
13 this period. Is the reason you just stated the reason
14 for that delay?

15 A. Yes. The teachers recommended, with
16 administrative support, and the board agreed on
17 delaying the book, a purchase of the 2002 book for the
18 2004.

19 Q. Okay. You referenced earlier some
20 additional review of this text, the biology text.
21 Tell us about that.

22 A. Yes. At that time period Mr. Baksa decided
23 to bring in our senior biology teacher, Mrs. Miller,
24 as well as Bert Spahr, to review the 2004 and 2002
25 textbooks, along with the original concerns that

1 Mr. Buckingham had as testified prior here. The
2 meeting was in my office.

3 Q. Now, you've mentioned his concerns. Did you
4 as superintendent know the specific nature of his
5 concerns?

6 A. No, not specifically.

7 Q. You've mentioned a meeting with Mr. Baksa
8 and some of the science teachers. Did you participate
9 in that meeting?

10 A. It was held in my office, and I was in and
11 out. But as far as line by line, no.

12 Q. How about the general nature of
13 Mr. Buckingham's concerns, did you have any
14 understanding about the general nature of his
15 concerns?

16 A. No.

17 Q. Do you recall anything about this meeting
18 that was held in your office?

19 A. Yes, I do.

20 Q. Tell us what you recall.

21 A. I recall that the biology teachers, as well
22 as Mr. Baksa, were ecstatic. In fact, I remember one
23 comment they made that they believed that Mr. Miller
24 or Dr. Miller and Mr. Levine must have been reading
25 Mr. Buckingham's mind because every one of his

1 concerns seemed to have been addressed in the 2004
2 edition.

3 Q. Did you have a discussion later with
4 Mr. Baksa about approval of the 2004 edition?

5 A. Yes. In fact, he felt significantly more
6 comfortable in recommending this textbook.

7 Q. And tell us, you know, what happened next
8 from your perspective relating to the text purchase.

9 A. The textbook was placed on the August 2nd
10 agenda.

11 Q. With that in mind, Rich, I'd ask you to
12 direct your attention to Defendants' Exhibit 28. Do
13 you recognize that document, Rich?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's the Dover Area School District board
17 planning meeting agenda for Monday, August 2nd, 2004.

18 Q. And I'd ask you to direct your attention to
19 that portion of Defendants' Exhibit 28 with the Bates
20 Number 116 in the lower right-hand corner and further
21 direct your attention to Item D under Roman XII
22 relating to curriculum. What do you see there?

23 A. D, approval to order the following textbooks
24 for the 2004-2004 school year: Prentice Hall *Biology*.

25 Q. At the time that this agenda was printed,

1 did you have an understanding concerning whether the
2 biology text recommended by the science faculty would,
3 in fact, be approved by the board at this meeting?

4 A. Yes, I did.

5 Q. And what was that understanding?

6 A. The understanding was it was going to be
7 purchased.

8 Q. Did you attend that meeting?

9 A. Yes.

10 Q. Do you recall developments that touched on
11 the approval of the biology text?

12 A. Yes.

13 Q. Tell us what you remember about that.

14 A. Mr. Baksa received a memo or at least a
15 document from Mr. Buckingham stating that he also
16 wanted the *Pandas* book approved.

17 Q. And with that in mind, Rich, I'd ask you to
18 direct your attention to Defendants' Exhibit 26. Do
19 you recognize that document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's the aforementioned memo from
23 Mr. Buckingham requesting that the following book be
24 added to the school board meeting agenda, *Of Pandas*
25 *and People*.

1 Q. And if you look at that first paragraph, did
2 Mr. Buckingham make another request with respect to
3 the placement of the item on the agenda?

4 A. Yes. He requested that be placed prior to
5 the purchasing of the Miller and Levine *Biology* book.

6 Q. Did you do anything in response to this
7 document?

8 A. Yes.

9 Q. What did you do?

10 A. I contacted Mr. Buckingham and requested he
11 come to my office and meet with myself and Mr. Baksa.

12 Q. Did you have a purpose when you asked
13 Mr. Buckingham to meet with you?

14 A. Yes.

15 Q. What was that purpose?

16 A. My purpose was to personally tell him that
17 he would not get my approval of purchasing the *Pandas*
18 book and that my purpose would be to work with him a
19 compromise concerning his specific request. He told
20 me he understood. He did not have the six votes
21 needed to override my recommendation. And
22 subsequently, at the end of the meeting, we developed
23 a compromise where he told me he would support the
24 text.

25 Q. Okay. Let's go back a little, because

1 you've said that he realized he didn't have votes
2 based on your objections. What do you mean by that,
3 Rich?

4 A. Pennsylvania School Board's -- actually, my
5 apologies, Pennsylvania code states that a board needs
6 six votes to override a superintendent's
7 recommendation.

8 Q. Did you -- we're at the meeting now. Did
9 Mr. Buckingham state his desires with respect to the
10 text *Of Pandas* at that meeting with you?

11 A. Yes. He wanted the *Pandas* book purchased at
12 the August 2nd meeting.

13 Q. Did he express any desire with respect to
14 the use of the text?

15 A. Yes. He wanted the text as a companion
16 text.

17 Q. Did you approve that request?

18 A. No, I did not.

19 Q. Did you discuss with him any possible way of
20 working with the text?

21 A. My recommendation was that I would
22 subsequently discuss with him and the science teachers
23 the possibility of having and using it as a reference.

24 Q. Did you agree to delay approval of the text
25 recommended by the science faculty until *Of Pandas* was

1 approved?

2 A. No, I did not.

3 Q. We've already seen that approval of the text
4 recommended by the faculty was on the agenda for the
5 August 2nd meeting. What was the result of this
6 meeting you've just described with Mr. Buckingham?

7 A. The result was I told him that we would
8 continue to put the Miller and Levine textbook on the
9 agenda, but I promised him that after the textbook,
10 Miller and Levine, was purchased, that I would sit
11 down or at least have Mr. Baksa sit down with the
12 science teachers and review the option of using the
13 *Pandas* book as a reference.

14 Q. Did you have an understanding of what
15 Mr. Buckingham's position was with respect to approval
16 of the text recommended by the science faculty at the
17 end of this meeting?

18 A. Yes.

19 Q. And what was that?

20 A. He was going to support the purchase of the
21 textbook.

22 Q. Did you communicate with any other board
23 member about this meeting with Mr. Buckingham?

24 A. Yes, I did.

25 Q. Tell us who you communicated with.

1 A. I communicated with the board president at
2 the time, who was Alan Bonsell, and he ended up -- as
3 board president would need to be aware of all of the
4 items on the agenda, and he subsequently also talked
5 to Mr. Buckingham.

6 MR. ROTHSCHILD: Objection, Your Honor.
7 Calls for hearsay.

8 MR. GILLEN: That's fine, Your Honor. I'll
9 cut him off right there.

10 THE COURT: The objection is sustained to
11 the extent that he started to get into hearsay.

12 MR. GILLEN: Sure.

13 THE COURT: And I'll tell you, Mr. Gillen,
14 when you get through this area of inquiry, wherever
15 you think it's an appropriate time, from now on we can
16 hit your mark and we'll take a break at that point.

17 MR. GILLEN: Two questions, Your Honor.

18 THE COURT: Okay.

19 BY MR. GILLEN:

20 Q. You say that you communicated with
21 Mr. Bonsell about the meeting. Did you have a belief
22 concerning whether he was pleased or displeased as a
23 result of that communication?

24 A. He was very pleased.

25 Q. Well, let me ask you. There's a back and

1 forth here. Let's just -- I want to first get to, did
2 you communicate to Mr. Bonsell what Mr. Buckingham had
3 told you?

4 A. Yes.

5 Q. Did you have a belief concerning
6 Mr. Bonsell's position with respect to that
7 information you communicated?

8 A. Yes.

9 Q. And what was that?

10 A. He was supportive of purchasing the
11 textbook.

12 Q. Okay. Was he supportive of Mr. Buckingham's
13 desire to have *Of Pandas* approved at this meeting so
14 far as you believed?

15 A. He was not supportive of that, no.

16 MR. GILLEN: Let's take a time out, Judge.

17 THE COURT: Let's take a break, about 15
18 minutes, since we're going to have a shortened session
19 this afternoon, and we'll pick it up at that point.
20 We'll be in recess.

21 (Recess taken.)

22 THE COURT: All right, Mr. Gillen, you may
23 continue.

24 MR. GILLEN: Thank you very much, Your
25 Honor.

1 BY MR. GILLEN:

2 Q. Dr. Nilsen, before we broke, we had a
3 discussion about your communicating Mr. Buckingham's
4 request with respect to Mr. Bonsell, with respect to
5 *Of Pandas* to Mr. Bonsell, and I want to just make sure
6 that the record is clear on what you derived from that
7 discussion.

8 There are two things that are at issue
9 there. First, Mr. Buckingham has brought up his
10 desire that the text *Of Pandas* be put on for approval
11 by the board in August. Did you convey that to
12 Mr. Bonsell?

13 A. Yes.

14 Q. Did you have an understanding concerning
15 Mr. Bonsell's disposition of that request?

16 A. At that time period he did not want it on
17 the agenda.

18 Q. Okay. Let me ask you about Mr. Buckingham's
19 posture at the end of the meeting you've described
20 with respect to the text recommended by the science
21 faculty.

22 As a result of your communication with
23 Mr. Bonsell, did you have an understanding concerning
24 his disposition about Mr. Buckingham's position on the
25 purchase or approval of the text recommended by the

1 science faculty?

2 A. Yes.

3 Q. And what was that?

4 A. Mr. Bonsell understood from me that
5 Mr. Buckingham supported the textbook being on the
6 agenda and being approved at the August 2nd board
7 meeting.

8 Q. And did you have an understanding concerning
9 whether that was good news or bad news to Mr. Bonsell?

10 A. It was good news.

11 Q. Okay. I'd ask you again to direct your
12 attention to Defendants' Exhibit 28 and ask you, in
13 case I haven't, do you recognize that document?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's the Dover Area School District school
17 board planning meeting agenda for Monday the 2nd,
18 2004.

19 Q. And I'd ask you to direct your attention to
20 the page of Exhibit 28 which has the Bates Stamp
21 Number 116 in the lower right-hand corner. You've
22 already indicated that the 2004 edition of Miller and
23 Levine is listed for approval. Is that correct?

24 A. That's correct.

25 Q. Is *Of Pandas* on that agenda for approval?

1 A. No, it's not.

2 Q. Why not?

3 A. I didn't put it there.

4 Q. And why didn't you put it there?

5 A. Because I did not recommend it.

6 Q. As you sit here today, do you have any
7 recollection of the events at the August 2nd, 2004
8 board meeting?

9 A. Yes, I do.

10 Q. And if we focus your attention on
11 recollection that bears on the approval of the biology
12 text, tell us what you recall.

13 A. I recall that it ended up in a four-four tie
14 for approval.

15 Q. Be a little more specific for the record. A
16 four-four tie with respect to approval of what?

17 A. Approval of the textbook. Four people voted
18 in favor of purchasing the textbook and four voted
19 against approval.

20 Q. Well, do you recall any discussion prior to
21 that tie vote?

22 A. No.

23 Q. Did you do anything in response to the tie
24 vote?

25 A. Yes.

1 Q. Tell us what you did.

2 A. I directed my comments to the individuals
3 that had voted against the vote and communicated them
4 my displeasure on the vote that they had taken and the
5 fact that if we did not purchase the book at that time
6 period, we would begin the school year without a
7 current book. And if we had purchased the book
8 subsequent to that, it would amount to the fact that
9 our teachers would have two different textbooks during
10 the school year, as well as our students would have
11 two different textbooks during the school year, as
12 well as we would have a book that would not reflect
13 the state standards. Our teachers were, at that time,
14 teaching very specifically the state standards.

15 Q. Well, did your observation produce a
16 reaction on the part of any board member?

17 A. Yes, it did.

18 Q. Tell us what reaction.

19 A. Angie Yingling made the comment, Well, in
20 that case, let's give the teachers and the students
21 what they need, and she requested a re-vote.

22 Q. What happened next?

23 A. She got a re-vote, and the board adopted
24 five-three for approval and purchase of the book.

25 Q. Now, when this vote took place, was there

1 any discussion of creationism?

2 A. No.

3 Q. When Angie Yingling decided to switch her
4 vote, did she mention creationism?

5 A. No.

6 Q. Did any board member have a discussion about
7 the curriculum and creationism at that time?

8 A. No.

9 Q. I'd ask you to look at Defendants' Exhibit
10 30. Do you recognize that document, Rich?

11 A. Yes.

12 Q. What is it?

13 A. It's a document I requested the assistant
14 superintendent's secretary to author. The assistant
15 superintendent at this time period was on vacation,
16 and I asked her to send a -- the exhibit memo to the
17 board curriculum subcommittee, including the president
18 and the high school principal, the senior biology
19 teacher, and the department chairperson.

20 Q. Okay. And you're referring now to the
21 Defendants' Exhibit 30, which is a memo from you to
22 certain board members and faculty?

23 A. That is correct.

24 Q. And let me ask you, was curriculum
25 ordinarily within the area of your responsibility?

1 A. No, it was not.

2 Q. Well, then why did you do this?

3 A. As stated earlier, Mr. Baksa was on
4 vacation.

5 Q. Okay. And given that Mr. Baksa was on
6 vacation, still, why did you send this specific memo?
7 Did it have any connection to your discussions with
8 Mr. Buckingham?

9 A. Yes. In my discussion with Mr. Buckingham
10 in July, when I told him that I would not support the
11 purchase of *Of Pandas and People* as a textbook, the
12 understanding I had with him when we left that July
13 meeting is the fact that we would purchase the Miller
14 and Levine book and then hold a conversation and a
15 discussion with the science teachers on what we would
16 do with the *Of Pandas and People* book.

17 Q. Well, the memorandum calls for a meeting on
18 August 27th, 2004. Did that meeting take place?

19 A. Yes, it did.

20 Q. Who was there?

21 A. The individuals listed, the board members,
22 Mrs. Brown, Mr. Buckingham, Mrs. Harkins, Mr. Bonsell,
23 Mrs. Miller -- I do not remember whether Mr. Riedel
24 was there or not -- Mrs. Spahr, Mr. Baksa, and myself.

25 Q. Do you recall any discussions with the

1 teachers about *Of Pandas* at this meeting?

2 A. Yes.

3 Q. Tell us what you recall.

4 A. The teachers, in a compromise, accepted the
5 fact that they would use the -- and agreed that they
6 would use the *Pandas* book as a reference in their
7 classroom.

8 Q. Did they have some concerns they expressed
9 at this meeting about *Of Pandas*?

10 A. They had voiced concerns that the textbook
11 was dated. The textbook had some faulty science
12 included in it.

13 Q. How about anything else? Did they express
14 any concern for their personal -- what should I say,
15 any personal consequences of the use of this text?

16 A. They had voiced a concern with liability
17 with the book.

18 Q. Did you do anything to try and allay that
19 concern?

20 A. Yes. I brought to the meeting a memo from
21 our solicitor that had researched if there was any
22 case law on the usage of the book.

23 Q. Did you give that to Jen Miller?

24 A. I gave it to everybody in the meeting.

25 Q. Do you remember anything else about this

1 August 27th meeting in terms of consequences that were
2 looked forward to?

3 A. Yes. The other issue that came out of that
4 meeting is the fact that Mr. Baksa would begin work on
5 updating the biology curriculum.

6 Q. How about Mr. Buckingham? You said there
7 was a discussion of using *Of Pandas* as a reference.
8 Was Mr. Buckingham satisfied with that?

9 A. No, he was not.

10 Q. What did he want?

11 A. He wanted the book used as a textbook,
12 companion book, to be right next to the Miller and
13 Levine book.

14 Q. Okay. We're looking now at a meeting on
15 August 27, 2004. Was there any discussion about using
16 public money to purchase this book?

17 A. There was a general conversation about
18 Mr. Buckingham wanting to use budget money. But as
19 far as a specific directive on using that, I don't
20 think there was any specific outcome on that.

21 Q. Okay. Did you come away from this meeting
22 with an understanding concerning whether other board
23 members supported the use of public funds to purchase
24 this book?

25 A. There were board members that did not

1 support using public funds, and there were some that
2 did.

3 Q. Okay. Let me ask you this. Did you later
4 on have a conversation about a way to incorporate *Of*
5 *Pandas* as a reference text that wouldn't entail the
6 use of public funds?

7 A. Yes.

8 Q. And tell us what happened there.

9 A. The board president at the time, Mr. Alan
10 Bonsell, communicated to me that he had been contacted
11 about individuals that were willing to donate the
12 finances to purchase 60 copies of *Of Pandas and*
13 *People*.

14 Q. Did he tell you who was donating the books
15 at that time?

16 A. No.

17 Q. Did you ask?

18 A. No.

19 Q. Why not?

20 A. Dover is much like many schools, financially
21 strapped, and anytime anybody wants to provide free
22 educational and appropriate materials, we'll accept
23 them.

24 Q. Has there come a time after this particular
25 incident where other books have been donated to the

1 Dover Area School District?

2 A. Yes.

3 Q. Did you accept those books?

4 A. Yes.

5 Q. Did you ask who sent them?

6 A. No.

7 Q. Why not?

8 A. Similar reasons.

9 Q. As you leave this August 27, 2004 meeting,
10 are there any developments that bear on the
11 curriculum?

12 A. At the time period Mr. Baksa is working with
13 the individuals in the board curriculum subcommittee
14 and teachers on a revised biology curriculum.

15 Q. Did you have detailed discussions with Mike
16 Baksa about that?

17 A. Not detailed, but general updates.

18 Q. Did there come a time when Mr. Baksa
19 communicated to you some input he had received from
20 board members with respect to a proposed curriculum
21 change?

22 A. Yes.

23 Q. With that in mind, Rich, I'd ask you to look
24 at Defendants' Exhibit 45. Do you recognize that
25 document?

1 A. Yes, I do.

2 Q. What is it?

3 A. It's a memo to Mr. Baksa from Mrs. Brown
4 entitled, Curriculum Committee Member.

5 Q. Were you shown this document?

6 A. Yes.

7 Q. Did you derive any impression from the
8 document with respect to the position of Casey Brown
9 on the proposed curriculum change?

10 A. Yes. Mrs. Brown, while she was on the
11 board, was one of our better wordsmiths and had a good
12 opportunity and a good ability to combine concerns and
13 thoughts in a very positive way, and it appeared in
14 either one of her recommendations here that she had
15 addressed all the concerns that the board had had
16 concerning the biology curriculum.

17 Q. Okay. And you've referenced those concerns,
18 and I want to ask you, Rich, as you look at this
19 document, did you have an impression concerning
20 whether it related to anything that you had heard at
21 board meetings in this June, July, and August period?

22 A. Yes.

23 Q. What sort of impression did you have?

24 A. The board was specifically concerned about
25 making sure in the biology curriculum that it had

1 stated that students were made aware of gaps in
2 Darwin's theory, as well as that there were other
3 explanations of the origins of life on earth.

4 Q. And in terms of the language that Mrs. Brown
5 used to express those gaps, did you have any -- or
6 those goals, did you have any understanding concerning
7 whether this language might address the board's
8 concerns?

9 A. Yes. I had the feeling that it had
10 addressed all their concerns.

11 Q. In terms of your goal leaving that
12 August 27th meeting, did you have an impression
13 concerning whether Mr. Baksa was making progress?

14 A. Yes. I thought that these two sentences
15 actually should have addressed all the issues and we
16 had completion.

17 Q. Okay. And let me ask you, look at those
18 issues. Just look at the first version that she
19 proposed. How did you see the issues at this time?

20 A. Again, the issues dealing with gaps and
21 recommending other explanations for origins of life.

22 Q. Did you do anything in response to this
23 document?

24 A. No.

25 Q. Did you ask Mr. Baksa to do anything in

1 response to this document?

2 A. No.

3 Q. Did you have an understanding concerning
4 what Mr. Baksa's continued activity would be in this
5 area?

6 A. Yes.

7 Q. What was that?

8 A. He would continue as the curriculum
9 coordinator, director, to continue to fine-tune and
10 get consensus on the statements.

11 Q. With that in mind, Rich, if you'd look at
12 Defendants' Exhibit 48. And, again, I'd ask you to
13 direct your attention to the page of Exhibit 48 that
14 has the Bates Number 135 stamped in the lower
15 right-hand corner. If you look at the Item 13 there
16 under Curriculum, you'll see an FYI. What's that?

17 A. It reads, FYI, the superintendent has
18 approved the donation of two classroom sets, 25 each,
19 of *Pandas and People*. Classroom sets will be used as
20 references and will be made available to all students.

21 Q. Okay. Now, the document describes the text
22 as a reference. Was there anything from the
23 August 27th, 2004 meeting with the board curriculum
24 committee and science faculty that justified that
25 description?

1 A. Yes. The faculty had agreed that they would
2 use it as a reference.

3 Q. I note that this has you in the position of
4 approving the donation of the text. Can you approve
5 the purchase of texts?

6 A. I cannot approve purchase of texts.

7 Q. Likewise, the biology text had to be
8 approved by the board in August. My question to you
9 is, how did you have the authority to accept this
10 book?

11 A. I'm allowed, under state code, to accept
12 reference materials.

13 Q. At the time that you accepted this text, *Of*
14 *Pandas*, did you have any understanding about what the
15 text contained?

16 A. No.

17 Q. Well, let me ask you, had there been
18 discussion of the text at the August 27th meeting?

19 A. Yes.

20 Q. Had any board member made objections to the
21 text as such?

22 A. No.

23 Q. How about the science faculty, did they
24 voice specific criticisms?

25 A. Again, there was the criticism about dated

1 science. But beyond that and the readability level,
2 no.

3 Q. What do you mean by "readability level"?

4 A. They had concerns that the text read at a
5 freshman college level.

6 Q. Okay. In terms of the approval of the
7 donation, did you see that as having any implications
8 for the curriculum?

9 A. Yes.

10 Q. Tell us what you understood at that time.

11 A. It would end up being a reference that the
12 teachers would make mention of.

13 Q. Okay. Did you -- looking at the approval of
14 the text now and looking forward to the next meeting
15 in October, did you get any communications from
16 Mr. Buckingham relating to the curriculum?

17 A. Yes.

18 Q. Tell us what they were.

19 A. Mr. Baksa communicated to me that
20 Mr. Buckingham wanted to place on the October 18th
21 agenda the board subcommittee curriculum
22 recommendation for the biology.

23 Q. Did you talk to Mr. Baksa about
24 Mr. Buckingham's request?

25 A. Yes.

1 Q. And what did you say?

2 A. At that time I reviewed the recommendation
3 and then contacted Mr. Buckingham.

4 Q. Okay. We've been talking about
5 consensus-building, or trying to, at least, and now
6 Mr. Buckingham has given you this call. Did you have
7 any concerns?

8 A. Yes.

9 Q. What were they?

10 A. My concern, first of all, was the fact that
11 the final recommendation did not have the full support
12 of either the curriculum committee or the teachers.

13 Q. And did you talk to Mr. Baksa about that?

14 A. Yes.

15 Q. Did you learn anything about other proposed
16 changes to the curriculum?

17 A. Yes. He had an additional recommendation
18 coming from the faculty.

19 Q. When Mr. Buckingham called and asked you to
20 put the board curriculum committee version on the
21 agenda for the August 18th -- October 18th meeting,
22 did you voice any objections?

23 A. Yes.

24 Q. What were they?

25 A. My first objection was that any final

1 recommendation going to the board, I would recommend
2 going through the community advisory council for one
3 last review. I also objected to it being on the last
4 board meeting in October as an action item because
5 historically what we've done is had an item on the
6 planning session or at least one meeting and then the
7 final action on a curriculum at the second meeting.

8 Q. Did Mr. Buckingham respond to the concern
9 you've just referenced for, you know, usually putting
10 things on two board -- having things as items in two
11 board meetings?

12 A. Yes.

13 Q. And what did he say?

14 A. He, first of all, said that he had already
15 received and the board had already received enough
16 input over the past six months that they had -- that
17 this had actually begun with dropping off the DVDs to
18 me in the fall, and we have had numerous board
19 meetings, conversations and input from many different
20 board members and community members and the fact that
21 he was interested in acting upon it.

22 He also voiced a concern that two of the
23 board members that had been involved in the six months
24 of conversation, Mr. Noel Wenrich and Jane Cleaver,
25 were moving out of the area and would not be part of

1 the vote if we delayed.

2 Q. Well, did he say anything further about
3 that, the possibility of two board members resigning?

4 A. Yes. His concern was the fact that if two
5 board members resigned, two new board members, when
6 they would come on the board, would not know what was
7 going on and would either not vote or would not have
8 the capacity to vote and therefore would request
9 delaying the vote.

10 Q. Did you get an impression for whether
11 Mr. Buckingham was seeking some closure here?

12 A. Yes.

13 Q. And what was that?

14 A. I think Mr. Buckingham was looking for
15 finalizing the work that had been done over the past
16 six months.

17 Q. You said also that you mentioned the
18 curriculum advisory committee to Mr. Buckingham. Does
19 the Dover Area School District policy require review
20 by the curriculum advisory committee prior to a
21 curriculum change?

22 A. No.

23 Q. Did Mr. Buckingham respond to your
24 suggestion that you let them have input?

25 A. Yes, he responded.

1 Q. What did he say?

2 A. He said he did not need to have them meet
3 anymore.

4 Q. Well, let's look at -- what did you do in
5 response to that? Did you send the board curriculum
6 version to the curriculum advisory committee?

7 A. What I did was, I contacted Mr. Baksa, who
8 is the chairperson of the committee, and communicated
9 to him that we would still send that information to
10 that committee for them to review it, that even though
11 they would not be meeting, they would at least have an
12 understanding of what was happening.

13 Mr. Buckingham is one board member and not
14 the whole board. And the board acts in general in
15 total, so I took it upon myself to reflect what the
16 board would be interested in, and that would be
17 specifically as much input as possible. So I directed
18 Mr. Baksa to send, I believe, both copies to the
19 committee to review.

20 Q. Did you put the board curriculum committee
21 version on the agenda for the October 18th meeting?

22 A. Yes, I did.

23 Q. Was that the only version you put on the
24 agenda?

25 A. No, I did not.

1 Q. Did Mr. Buckingham tell you to put the other
2 version on the --

3 A. No, he did not.

4 Q. Why did you do it?

5 A. Again, I thought the board needed to know
6 everything that was going on, and I thought it
7 important for the board to know Mr. Baksa and my
8 stance, that we administratively did not recommend
9 Mr. Buckingham's recommendation, that we actually
10 supported the teachers.

11 Q. Do you know if there was any feedback
12 provided by the curriculum advisory council in
13 response to your directive?

14 A. Yes.

15 Q. All right. With that in mind, I'd ask you
16 to look at Defendants' Exhibit 67. Do you recognize
17 that document?

18 A. Yes, I do.

19 Q. Before we get to that, I skipped one, it
20 looks like. Would you go back to 51. Do you
21 recognize that document, Rich?

22 A. Yes, I do.

23 Q. What is it?

24 A. It's a memorandum from Mr. Baksa to the
25 curriculum advisory council dealing with the biology

1 curriculum recommendation.

2 Q. And now go back to 67. That describes
3 comments on proposed biology curriculum changes.
4 There are two items there. Did you discuss those with
5 Mr. Baksa?

6 A. Yes.

7 Q. What was the nature of your discussion?

8 A. The first one states, According to policy,
9 the curriculum advisory committee should review
10 changes first before going to the board. That was a
11 red flag to us, so we ended up researching whether
12 that was true or not.

13 Q. And --

14 THE COURT: Who is this from, just so I
15 understand?

16 MR. GILLEN: Yes.

17 THE COURT: Who is the author of 67?

18 MR. GILLEN: 67 was authored by Mr. Baksa in
19 response to Dr. Nilsen's --

20 THE COURT: All right. I just wanted that
21 clarification. If you said it, I didn't get it.

22 MR. GILLEN: No problem, Judge.

23 BY MR. GILLEN:

24 Q. Go ahead, Rich, please tell us. I mean,
25 that first item suggested there's been a departure

1 from policy. Did you look into that?

2 A. Yes, we did. Tom Schaffer, who is the
3 assistant principal in charge of policy, researched
4 our current policy and all prior policies in
5 relationship to that comment.

6 Q. Did you gain an understanding concerning
7 whether the district policy required review by the
8 advisory committee?

9 A. Yes, we did.

10 Q. And what was that?

11 A. It did not.

12 Q. Okay. I'd ask you to look at Exhibit 71.

13 Do you recognize that document, Rich?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's the August 2nd, 2004 curriculum
17 development policy.

18 Q. Is that the policy you looked at in response
19 to this concern?

20 A. One of, yes.

21 Q. Okay. I'd ask you -- skip through these.

22 Excuse me a second. As we get to this meeting, I want
23 to ask you one question again. Did you put one or two
24 versions of the curriculum change on the agenda for
25 October 18th?

1 A. I put two.

2 Q. And as we approach that meeting, I want to
3 get a few documents identified here, and I'd ask you
4 to go to Exhibit 60.

5 A. I'm sorry, again, please?

6 Q. Exhibit 60. Do you recognize that document,
7 Rich?

8 A. Yes, I do.

9 Q. What is it?

10 A. It's the enclosure 11A for the board agenda.
11 It's the recommendation from the -- dealing with the
12 biology curriculum from the board.

13 Q. And when you say "from the board," do you
14 mean the board curriculum committee, to be more
15 precise?

16 A. That is correct.

17 Q. And if you look at the first page of Exhibit
18 60, if you look in the lower right-hand corner,
19 there's a reference to an enclosure, Roman XI-A.
20 Correct?

21 A. That's correct.

22 Q. And I'd ask you to flip to the next page of
23 Exhibit 60. There's an attached page with a Bates
24 Stamp Number 18, and I'd ask you to look at that. Do
25 you recognize that?

1 A. Yes, I do.

2 Q. What is it?

3 A. That is the board subcommittee
4 recommendation for the biology curriculum change.

5 Q. I'd ask you next, Rich, to look at Exhibit
6 61. Do you recognize that document?

7 A. Yes, I do.

8 Q. What is it?

9 A. It's the board curriculum recommendation
10 from the administration and staff.

11 Q. Okay. And if you look at that document,
12 you'll see on the page Bates stamped Number 19 a
13 reference to an enclosure, Roman XI-B. Correct?

14 A. Correct.

15 Q. I'd ask you to flip the page and look at the
16 document with the Bates Stamp Number 20 that is part
17 of Exhibit 61. Do you recognize that document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's the administration and faculty
21 recommendation for the biology change.

22 Q. Did you receive these documents in your
23 capacity as superintendent?

24 A. Yes, I did.

25 Q. Did you have an understanding concerning the

1 difference between Exhibit 60 and Exhibit 61, the
2 proposed curriculum changes that were attached?

3 A. Yes, I did.

4 Q. What were the differences as you saw them?

5 A. Two. Under the second column, it notes on
6 the board recommendation but not the administration
7 and teacher recommendation intelligent design, and
8 under the materials and resources under the board
9 recommendation and not the teachers and administration
10 *Of Pandas and People* as a reference.

11 Q. And just to make sure the record is clear
12 and that we get the point across, is it true that the
13 board curriculum committee version references *Of*
14 *Pandas* as a reference text?

15 A. That's correct.

16 Q. And does the staff and administration
17 recommendation do that?

18 A. No.

19 Q. Okay. Is it true that the board curriculum
20 committee version references intelligent design?

21 A. Yes.

22 Q. And is it true that the staff and
23 administration version Roman XI-B does not?

24 A. That is correct.

25 Q. Was it your understanding that those were

1 the points of divergence at that time between the two
2 versions?

3 A. Yes.

4 Q. Learning that there were two versions
5 circulating at this time, did you do anything?

6 A. Yes.

7 Q. What was that?

8 A. I contacted the board president, Mr. Alan
9 Bonsell, and told him that there were two items on the
10 agenda, there were two recommendations coming dealing
11 with the biology curriculum.

12 Q. And why did you contact him?

13 A. As board president, it's my responsibility
14 to communicate to him issues that may rise on the
15 board agendas.

16 Q. Looking at the way he approached this
17 process, was there anything that you saw that he would
18 want that was inconsistent with these two versions?
19 By that I mean, you've got two versions. Knowing
20 Mr. Bonsell as board president, would he want
21 disagreement or consensus?

22 MR. ROTHSCHILD: Objection. Calls for
23 speculation.

24 MR. GILLEN: I can ask for his belief
25 concerning what Mr. Bonsell would regard as desirable

1 as the outcome of a collaborative process.

2 THE COURT: Well, the way you framed the
3 question, it was sort of in the alternative, would he
4 want disagreement or consensus. You can ask him to
5 characterize his understanding of Mr. Bonsell's
6 reaction, but I think the --

7 MR. ROTHSCHILD: It's leading as well, Your
8 Honor. Disagreement or consensus I think is --

9 THE COURT: Well, we'll allow a little bit
10 of leading, Mr. Rothschild, or we'll never finish this
11 trial. So I'll overrule the objection on that basis.
12 I'll sustain it. You can rephrase.

13 MR. GILLEN: I do understand, Your Honor.

14 BY MR. GILLEN:

15 Q. Rich, in your capacity as superintendent,
16 did you have an understanding concerning the way
17 Mr. Bonsell would view this state of affairs, namely,
18 that for the proposed curriculum change, there are two
19 rival versions being offered instead of one?

20 A. Yes. Mr. Bonsell always had a premium on
21 consensus. He, throughout this process and almost
22 every process that we were involved in in the school,
23 the building project on through, spent a considerable
24 amount of time and effort making sure that everybody
25 agreed or at least compromised on an issue.

1 Q. Did you do anything as a result of your
2 discussion with Mr. Bonsell?

3 A. Yes.

4 Q. What did you do?

5 A. Mr. Bonsell requested that I meet with the
6 senior biology teacher, Jen Miller, to see if I could
7 generate from her consensus.

8 Q. And did you do that?

9 A. Yes, I did.

10 Q. Did you have a discussion with Jen Miller
11 about this issue?

12 A. Yes, I did.

13 Q. Tell us what you said.

14 A. I met Jen Miller, because she was a senior
15 biology teacher, and discussed both of the proposals
16 and the issue dealing with the divergent issues and
17 communicated to her that Mr. Bonsell had recommended a
18 note, specifically that origins of life will not be
19 taught, because he thought that would address the
20 concerns that the teachers continually had about
21 teaching the origins of life. And we also discussed
22 at length the placement of the *Panda* book.

23 MR. ROTHSCHILD: Objection, Your Honor. I
24 think it's hearsay. It's not clear from Dr. Nilsen's
25 testimony whether he's repeating exactly what he said

1 or he is incorporating in his answer some reasons for
2 the things he said, his reasons for why origins of
3 life --

4 THE COURT: Relating to what Mr. Bonsell
5 said, I think, specifically?

6 MR. ROTHSCHILD: Right, why Mr. Bonsell
7 wanted to add origins of life.

8 MR. GILLEN: I didn't ask him why.

9 MR. ROTHSCHILD: No, it's the answer.

10 THE COURT: I know you didn't. It wasn't
11 your question. But I'll simply say to the witness --
12 and I'll sustain the objection on that basis -- what
13 we want you to avoid doing, unless otherwise
14 instructed, is to avoid saying what someone else said.

15 THE WITNESS: Okay.

16 THE COURT: Now, there are circumstances
17 where you can do that, but if I tried to explain that
18 to you, we'd be here until tomorrow. We're not going
19 to do that. But try to stay with that rule, and that
20 will eliminate the objections. You can proceed.

21 MR. GILLEN: Thank you, Your Honor.

22 BY MR. GILLEN:

23 Q. Rich, what did you tell Mrs. Miller about
24 the purpose of the note?

25 A. The purpose of the note was to allay the

1 fears that the teachers had that if they mentioned
2 intelligent design, they would be liable.

3 Q. And did you have an understanding concerning
4 how the note was supposed to do that?

5 A. Yes.

6 Q. What was that understanding?

7 A. The understanding was that the note would
8 reinforce the fact that the teachers did not and will
9 not teach the origins of life.

10 Q. And how does that relate, in turn, to the
11 subject that's at issue here, intelligent design?

12 A. The teachers believed that the intelligent
13 design referenced the origins of life.

14 Q. Did you discuss anything else with
15 Mrs. Miller that touched on the differences between
16 the proposed curriculum changes?

17 A. Yes.

18 Q. What?

19 A. The placement of the *Pandas* book.

20 Q. And what was the issue there?

21 A. In the August meeting, the faculty had
22 agreed on the compromise of having the *Pandas* book as
23 a reference in the individual classroom, and we talked
24 about the implementation of that.

25 And specifically, she asked me where and how

1 she was to bring that book into the classroom. And I
2 ended up telling her that it should be on the shelves.
3 And then she communicated to me that she couldn't do
4 that and have the students see it, because all of her
5 shelves had doors on them. And then I ended up
6 saying, well, then place it on the tables. And then
7 she referenced the fact that that would be intrusive
8 to her instruction.

9 Q. Well, let me ask you in terms of the listing
10 of *Of Pandas* on the curriculum, did you discuss that
11 with Mrs. Miller?

12 A. Yes.

13 Q. What did you tell her?

14 A. I told her specifically that I had
15 recommended placing that there so if in the future and
16 currently if the teachers had referenced that, that
17 their liability would be covered because it was a
18 board action.

19 There is case law or at least directive that
20 if a board directs a superintendent and/or teachers to
21 do something, that they're under the cover of
22 direction. And in this case, I thought putting the
23 reference *Of Pandas and People* on the right-hand side
24 would protect the teachers currently and in the future
25 if they made that reference.

1 Q. Did you ask Mr. Baksa to do anything as a
2 result of the fact that two rival versions were
3 created and circulating?

4 A. Yes. The outcome of the meeting with
5 Mrs. Miller was inconclusive, so I requested him,
6 after I communicated that it was an inconclusive
7 meeting, he then spent some time trying to develop a
8 compromised version.

9 Q. Did there come a time when you had reason to
10 believe that Mr. Baksa had been successful?

11 A. Yes.

12 Q. I'd ask you to look at Exhibit 68. Do you
13 recognize that document, Rich?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's the -- attached is the second draft of
17 the recommended changes to the biology curriculum from
18 the administration and staff.

19 Q. And did you understand that this document
20 was a result of further collaboration with the staff?

21 A. Yes.

22 Q. Did you have an understanding concerning the
23 nature of the compromise that was offered here?

24 A. Yes.

25 Q. I'd ask you to direct your -- well, for the

1 record, I'd say first that Exhibit 68 references an
2 enclosure, Roman XI-C. Correct?

3 A. Yes.

4 Q. And the following page, which is Bates
5 stamped 22, is attached. Correct?

6 A. Yes.

7 Q. Is this the document that Mr. Baksa showed
8 you?

9 A. Yes.

10 Q. Did he tell you anything when he showed it
11 to you?

12 A. He told me that he had --

13 MR. ROTHSCHILD: Objection, Your Honor.
14 Calls for hearsay.

15 MR. GILLEN: Your Honor, if I can ask him --
16 I can ask him questions concerning what someone said
17 if it's for the purpose of establishing what he
18 believed. That's what I've done. I'm not offering
19 Mr. Baksa's statement for the truth of the matter
20 asserted. That's something you'll have to find. But
21 I'm asking Rich what Mr. Baksa told him about this
22 document for the purpose of getting his understanding.

23 THE COURT: Well, he can say what his
24 understanding is. Why doesn't it go to the truth? I
25 think it does. We're talking about the emergence of a

1 particular policy by the board, and it seems to me
2 that what Mr. Baksa said to him may go to the truth.
3 You seem to conflate that with some state of mind, but
4 I don't see it.

5 MR. GILLEN: I suppose, as you said, it's an
6 exceedingly fine line, and we won't spend all day.
7 I'll ask him his understanding as to what this
8 document represented. Is that satisfactory?

9 THE COURT: I think that cures the
10 objection. Does it?

11 MR. ROTHSCHILD: I believe so, Your Honor.

12 THE COURT: All right. The objection is
13 sustained then for the record on that basis. Why
14 don't you proceed in that fashion.

15 MR. GILLEN: Certainly.

16 BY MR. GILLEN:

17 Q. Rich, looking at this document, the portion
18 of Exhibit 68 with the Bates Stamp Number 22, did you
19 have an understanding concerning what that document
20 represented?

21 A. Yes.

22 Q. Did you have an understanding concerning --
23 what was it?

24 A. It was the document that Mr. Baksa generated
25 as a compromise.

1 Q. Okay. Looking at that document, did you
2 have an understanding concerning the elements of the
3 compromise reflected in the document?

4 A. Yes.

5 Q. And what were they?

6 A. Two things. One, under the first two
7 columns, Note, the origins of life is not taught.
8 And, secondly, under materials and resources, it
9 references *Of Pandas and People*.

10 Q. Okay. I'd also ask you to direct your
11 attention to the second column of the page under the
12 heading, Unit Content, Concepts and Process. Further
13 direct your attention to the language at the
14 bottom-most portion of that column. Would you look at
15 that, Rich?

16 A. Yes.

17 Q. Did you have an understanding concerning
18 whether that proposed language reflected an effort to
19 compromise?

20 A. Yes.

21 Q. What was your understanding?

22 A. Intelligent design was taken out.

23 Q. Okay. Now, if we look at this document,
24 Roman XI-C, and consider that in comparison to the
25 board curriculum committee's proposed version, which

1 is Roman XI-A, did you have an understanding
2 concerning how they diverged?

3 A. I believe two words very specifically,
4 intelligent design.

5 Q. Well, you've said those two words, and let
6 me ask you also to direct your attention to the note
7 that is on Roman XI-C.

8 A. Yes. And the note on C specifically states,
9 Note, the origins of life is not taught.

10 Q. Are these the three versions of the
11 curriculum change that were at issue as we enter the
12 October 18th meeting?

13 A. Yes.

14 Q. With that in mind, Rich, I'd ask you to
15 direct your attention to Defendants' Exhibit 63. Do
16 you recognize that document?

17 A. Yes.

18 Q. What is it?

19 A. It's the October 18th, 2004 Dover Area
20 School District board agenda.

21 Q. And I'd ask you to direct your attention to
22 that portion of Exhibit 63 which has the Bates Stamp
23 Number 145 in the lower right-hand corner. Do you
24 have that, Rich?

25 A. Yes, I do.

1 Q. If you'd look at the agenda item curriculum.
2 I notice that there are two of the versions we've
3 discussed listed. Which are they?

4 A. A and B.

5 Q. That means that Roman XI-C is missing. Can
6 you tell me why?

7 A. The C version was developed after the agenda
8 was printed. We print the agenda on Wednesday prior
9 to and submit to the board five days in advance, and C
10 was developed after the board got the agenda.

11 Q. Under that item there is further background
12 information. Would you read that for the record?

13 A. Background information, copies of the
14 changes have been sent to the district curriculum
15 advisory committee and the science department.

16 Q. Is that true?

17 A. Yes, it was.

18 Q. As we enter the October 18th meeting, let me
19 ask you if you discussed these different versions of
20 the proposed curriculum change with the board.

21 A. Yes. Prior to the meeting, we were in
22 executive session to meet the new high school
23 assistant principal, and at the end of the meeting, on
24 the way to the board meeting, I handed the board all
25 three copies -- they had not yet received C -- just to

1 make sure that they had in their possession all three
2 copies prior to the discussion.

3 Q. Do you recall what you told them?

4 A. I reiterated at that time period the
5 recommendation, what was the covered section, who had
6 recommended what and why.

7 Q. Okay. Removing from the executive session
8 to the public portion of the board meeting that night,
9 do you remember anything about that public portion of
10 the meeting?

11 A. Yes.

12 Q. Tell us what you remember.

13 A. Mrs. Bert Spahr had attended the meeting and
14 gave comments during the public comment period.

15 Q. And do you remember a reaction by any board
16 member to the comments?

17 A. Yes. Mr. Buckingham asked her where she had
18 gotten her law degree.

19 Q. And why did Mr. Buckingham say that?

20 MR. ROTHSCHILD: Objection, Your Honor.

21 Calls for speculation.

22 BY MR. GILLEN:

23 Q. Well, did you have a sense or belief as to
24 why he uttered that comment?

25 MR. ROTHSCHILD: That still calls for

1 speculation, Your Honor.

2 MR. GILLEN: He can give his impression or
3 belief. That's what a lay witness does frequently.

4 THE COURT: Well, the objection to the first
5 question is sustained. He doesn't know why. Why
6 can't he ask him what his impression was?

7 MR. ROTHSCHILD: I'll withdraw my objection.

8 THE COURT: All right. That objection is
9 overruled. He can answer the question.

10 THE WITNESS: During the public comment
11 period of Mrs. Spahr, she referenced that intelligent
12 design was creationism and that intelligent design was
13 illegal.

14 BY MR. GILLEN:

15 Q. And did Mr. Buckingham agree with her?

16 A. No, he did not.

17 MR. ROTHSCHILD: Objection, Your Honor.
18 Calling for speculation.

19 THE COURT: I'll sustain the objection.

20 BY MR. GILLEN:

21 Q. Do you believe that Mr. Buckingham agreed
22 with her?

23 MR. ROTHSCHILD: Objection, Your Honor. It
24 calls for speculation. If Mr. Buckingham said
25 something that provided his understanding, that would

1 serve as a basis, but this is really --

2 THE COURT: Is an acceptable question, what
3 was your impression as to Mr. Buckingham's response?

4 MR. ROTHSCHILD: I think your suggestion
5 might cure it.

6 THE COURT: Answer that question.

7 MR. GILLEN: Thanks, Judge.

8 THE WITNESS: Am I allowed to ask her to
9 reread that question, Your Honor?

10 THE COURT: Yes. Read that back.

11 (Previous question read back.)

12 THE WITNESS: My impression of
13 Mr. Buckingham's response was the fact that he wanted
14 to know where she got her law degree.

15 BY MR. GILLEN:

16 Q. Good enough. Let me ask you as
17 superintendent, without going into the details, did
18 you have reason to believe that you were recommending
19 an unlawful course of action to the board on the night
20 of the October 18th meeting?

21 A. Did I have reason to believe that?

22 Q. Yes.

23 A. I had reason to believe we were not.

24 Q. Okay. Let me ask you, when the board came
25 up -- board curriculum items came up for a vote, was

1 there discussion of that issue?

2 A. Yes.

3 Q. And despite that claim that it would be
4 illegal, was the board curriculum committee -- did the
5 board approve a curriculum change?

6 A. Yes.

7 Q. Do you have an understanding concerning
8 whether the board believed it was engaged in an
9 unlawful course of conduct?

10 A. I have a reason to believe that the board
11 did not think they were involved in an illegal
12 activity.

13 Q. Okay. Let's talk about the process that
14 resulted when these rival versions came up for a vote.
15 Do you remember anything about that?

16 A. Yes.

17 Q. Tell me what you recall.

18 A. I recall that it was moved and that through
19 a series of amendments, individuals tried to delay the
20 approval of that, of the biology curriculum.

21 Q. Well, as the voting started, did you make
22 any comments?

23 A. At the beginning of the discussion of the
24 curriculum, I made sure that all the board members
25 understood what the three options were, who supported

1 which options, and what the difference was in all
2 three options.

3 Q. In terms of support for the various options
4 that were circulating at this time, did you make a
5 statement with respect to the administration's
6 position?

7 A. Yes. I specifically stated that Item C was
8 the administrative recommendation, and, in fact, since
9 Mr. Baksa was in charge of the curriculum, I requested
10 he to come also to the podium and reiterate his
11 support, as well.

12 Q. And why did you take that position?

13 A. It was the administrative feeling that for a
14 successful implementation of the curriculum, we needed
15 the teachers to buy into the program and change.

16 Q. How about in terms of the relationship
17 between the various versions, did you think that Roman
18 XI-C did a good job addressing board goals?

19 A. It was also our understanding, if I may
20 answer it this way, that over the past six months,
21 each of the concerns that we had heard from every
22 board member from presenting gaps, presenting
23 recommendation of using *Pandas* as a reference, as well
24 as the origins of life will not be taught, that C
25 covered all of the concerns that had been voiced over

1 the past six months.

2 Q. Well, did you support the compromised
3 version because you believed that intelligent design
4 was religion?

5 A. No.

6 Q. Did you have any understanding as to whether
7 intelligent design was religion or science at this
8 time?

9 A. In a general sense, we had a report from our
10 solicitor telling us that he had researched it and
11 found no case law indicating either way.

12 Q. All right. Let me ask if you had derived
13 any impression concerning whether intelligent design
14 was science from your conversations with the science
15 faculty.

16 A. Over the conversations that I have had with
17 the board over the -- at that time and prior, it had
18 been conveyed to me that there were over 300
19 individuals, scientists, specifically, that had
20 supported it. There was a university professor from
21 Lehigh that had done a lot of the foundation work
22 associated with it, and the science teachers had
23 approved the compromise of having the *Of Pandas and*
24 *People* book as a reference.

25 Q. If you look at that compromised version

1 again, which is Exhibit 68, Rich, I'd just like you to
2 describe your understanding concerning the elements of
3 concerns you had heard from this period June through
4 October of 2004 which you saw reflected in that
5 document.

6 A. The first concern is the fact of the origins
7 of life will not be taught. That was placed in there.
8 The other concern is the fact of making students aware
9 of the gaps and problems, and also the other concern
10 of other theories of evolution, as well as the concern
11 of referencing *Of Pandas and People*.

12 Q. Okay. And just to make sure we're clear on
13 this, you supported the reference, the listing of
14 *Pandas* as a reference. Correct?

15 A. Yes.

16 Q. And what was your reason?

17 A. In support of a board request that we end up
18 having that as a reference material.

19 Q. How about with respect to teachers'
20 expressed concerns?

21 A. Specifically, again, reiterating past
22 testimony, I thought that provided an opportunity for
23 the teachers to follow a board directive and provided
24 coverage for their liability concerns.

25 Q. Do you remember any discussion of board

1 members before the voting started?

2 A. Yes.

3 Q. Tell me what you recall.

4 A. A minority of the board wanted to postpone
5 the adoption and send it back to various committees
6 for continued review.

7 Q. Let me ask you to look at Defendants'
8 Exhibit 64 and further, Rich, to direct your attention
9 to the page with Bates Stamp Number 158.

10 A. I have that.

11 Q. Okay. Now, as we look at the voting
12 process, you mentioned that some people wanted to
13 delay the vote. Do you recall the votes taking place?

14 A. Yes.

15 Q. Did you have a sense for the purpose of the
16 various votes?

17 A. Yes.

18 Q. What was your understanding?

19 A. My understanding was the fact that some
20 board members still were not satisfied with the status
21 of the recommendation and wanted to revisit it.

22 Q. And how about the remainder of the board?

23 A. My understanding of the remainder of the
24 board is the fact that at that time they wanted to end
25 the conversation, had gathered enough information, and

1 were prepared to act that evening.

2 Q. All right. As the voting starts, there were
3 three versions of the proposed curriculum change that
4 were at issue. Correct?

5 A. That's correct.

6 Q. Was the final version any one of those?

7 A. No.

8 Q. What was the final version?

9 A. The final version was board recommendation A
10 with the note, origins of life will not be taught as a
11 note.

12 Q. How did that come to pass?

13 A. The board president at the time, Mr. Alan
14 Bonsell, made that recommendation.

15 Q. And you say "recommendation." Did he make a
16 motion?

17 A. Yes, he made a motion.

18 Q. Was that motion seconded by anyone?

19 A. Yes.

20 Q. Do you recall who seconded his motion?

21 A. Yes, Mr. Brown.

22 Q. Did you have an understanding concerning the
23 purpose of Mr. Bonsell's motion?

24 A. Yes. He was concerned and continually
25 hearing the teachers' concern that they thought they

1 were involved in a liable situation by teaching the
2 origins of life. And he stated that he believed that
3 stating the --

4 MR. ROTHSCHILD: Objection, Your Honor. The
5 answer contains hearsay.

6 MR. GILLEN: He's testifying, did you have
7 an understanding concerning Mr. Bonsell's purpose for
8 that note.

9 THE COURT: The objection is sustained. He
10 was repeating what he said.

11 MR. GILLEN: Oh, okay.

12 THE COURT: That was the basis of the
13 objection. So you can ask a further question.

14 BY MR. GILLEN:

15 Q. And forgive me, Your Honor, Rich, the thing
16 is, you can testify to what you understand but not
17 what someone said.

18 A. My apologies.

19 Q. That's quite all right. Did you have an
20 understanding concerning Mr. Bonsell's purpose in
21 making that motion?

22 A. Yes, I had an understanding.

23 Q. Okay. Tell me what it was.

24 A. My understanding was that he wanted to
25 address the teachers' concerns about teaching the

1 origins of life.

2 Q. Okay. You said that the motion was seconded
3 by another board member?

4 A. Yes.

5 Q. And did that motion eventually come up for a
6 vote?

7 A. Yes.

8 Q. And was it that vote that produced the final
9 version of the curriculum change?

10 A. Yes.

11 Q. During this meeting, was there any
12 discussion by any board member about their desire or
13 any desire to teach creationism?

14 A. No.

15 Q. Did the term come up?

16 A. No.

17 Q. On the part of any board member, at least.
18 Did any board member reference that?

19 A. My prior answer referred to board members,
20 and the answer is no board members.

21 Q. Okay. How about from members of the public,
22 were there assertions involving creationism?

23 A. Yes.

24 Q. Do you recall any of those?

25 A. Minimally. I believe Mrs. Bert Spahr had

1 made comments.

2 Q. And what was the thrust of her comment? How
3 did you understand what she said?

4 A. I understood that she identified intelligent
5 design with creationism.

6 Q. Okay. As the voting progressed, were there
7 any other developments that produced a controversy in
8 the aftermath of the board meeting?

9 A. Yes.

10 Q. What were they?

11 A. During that time period, the discussion
12 addressed the fact that we had a recommendation from
13 our solicitor that the liable concern with the board
14 and the teachers was not an issue.

15 Q. Okay. And without going into that, you've
16 said "liable." Do you mean liability?

17 A. Yes.

18 Q. And were any statements made in response to
19 that?

20 A. Yes. When the individual mentioned, well --
21 or another board member said, well, what if they are
22 wrong? Ms. Geesey then communicated, well, we'll then
23 fire them.

24 Q. And was there a reaction to that statement?

25 A. Yes. There was a muffled gasp.

1 Q. When she made that statement, what was your
2 understanding of her point?

3 A. My understanding of her point, and continues
4 to be my understanding of her point, is the fact that
5 if she believed that the solicitor gave us bad
6 information, that that was reason for reviewing the
7 contract.

8 Q. And I believe you said "if" he did.
9 Correct?

10 A. Yes.

11 Q. Okay. Did Mrs. Geesey ever ask you to do
12 anything as a result of the controversy surrounding
13 her comment?

14 A. Yes. The next morning the paper reported
15 that she had recommended firing the teachers. And she
16 immediately contacted me and told me that that was
17 obviously not what she had said, and I agreed with
18 her, and she did two things.

19 One, she sent me an e-mail explaining her
20 position and asked me to forward that throughout all
21 the teachers stating on her behalf that -- or, in her
22 words, that that was not what she had intended and, in
23 fact, that she had liked all the teachers and
24 supported the teachers.

25 Secondly, to prove that that was not what

1 she had said, she requested that I develop a verbatim
2 transcript of the October 18th meeting concerning the
3 issues of -- or the area of curriculum.

4 Q. Well, the tape has been mentioned before, so
5 I want to show you that tape, Rich.

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

8 THE COURT: You may. I hope it's in there.

9 MR. GILLEN: It's been sealed, believe me.

10 BY MR. GILLEN:

11 Q. Rich, take a look at that tape. And I want
12 to ask you, does Dover Area School District have a
13 general policy with respect to the taping of its board
14 meetings?

15 A. Yes, it does.

16 Q. Describe that for us, please.

17 A. The general policy and procedure is the fact
18 that the secretary of the board tapes all meetings,
19 uses that as a backup for the notes and developing the
20 minutes. Once the minutes have been approved, the
21 policy, even prior to when I showed up, was the fact
22 that either the tapes were overwritten or destroyed.

23 Q. Was this tape destroyed?

24 A. No.

25 Q. And why was that?

1 A. By recommendation of counsel.

2 Q. Okay. And we were not your counsel at the
3 time of that recommendation?

4 A. No. It was our school counsel.

5 Q. Okay. Very good. You were well advised.
6 Let me ask you, is that tape complete?

7 A. This tape is complete, but the taping of the
8 board meeting is not.

9 Q. And I understand what you're getting at, but
10 the Judge might not, so let's go through that again.
11 I understand that's all the tape we have?

12 A. Yes.

13 Q. Does the tape record the whole meeting?

14 A. The tape does not cover the whole meeting.
15 The background of that is the fact that at this time
16 our business manager and board secretary was battling
17 cancer and was on medical leave, and her secretary had
18 filled in as the acting secretary over that time
19 period.

20 But at this meeting, her son had a wrestling
21 match, and she was absent, so a third secretary filled
22 in at that time period. And when I requested for the
23 verbatim transcript to be developed, he communicated
24 to me that when he had taken the first tape out to put
25 a second tape in, that he had paused the tape, and

1 when he had hit play, he had not unpaused the tape, so
2 the second half of the meeting was not recorded.

3 Q. Did you ever act on Ms. Geesey's request for
4 a transcript?

5 A. Yes.

6 Q. With that in mind, I'd ask you to look at
7 Defendants' Exhibit 153.

8 A. I'm sorry, what number?

9 Q. 153. Do you recognize that document, Rich?

10 A. Yes, I do.

11 Q. What is it?

12 A. It's the verbatim transcript from the tape
13 dealing with the curriculum section.

14 Q. And does that transcript reflect the whole
15 of the board meeting discussions relating to the
16 curriculum change?

17 A. No.

18 MR. ROTHSCHILD: Your Honor, I'm not sure
19 this is an objection or a clarification, but my
20 understanding is that this is not a full verbatim
21 transcript of what was actually on the tape, that
22 there's actually more on the tape. We've had some
23 back and forth.

24 MR. GILLEN: And I couldn't agree more.
25 It's a partial transcript, and I'll make that clear if

1 there's any question on that score.

2 MR. ROTHSCHILD: Okay.

3 BY MR. GILLEN:

4 Q. And let's do that for the record, Rich. Let
5 me ask you, perhaps, a more precise question so that
6 we can say precisely what's on here. First of all, is
7 this a transcript of the entire board meeting?

8 A. No.

9 Q. It is a transcript of a portion of the board
10 meeting. Correct?

11 A. Yes.

12 Q. What portion?

13 A. The beginning of the discussion on the
14 curriculum section of the board meeting.

15 Q. Okay. Is the transcript all of that
16 discussion so far as it was all taped?

17 A. No, there were sections the secretary left
18 out.

19 Q. And those were the votes?

20 A. Yes.

21 Q. Now, where the transcript ends, is that
22 where the tape ends?

23 A. Yes.

24 Q. So as Mr. Rothschild indicated, it's partial
25 in that sense?

1 A. Yes.

2 MR. ROTHSCHILD: So that the record is
3 clear, I think what you're saying is there are parts
4 of the meeting that are on the tape that precede this?

5 MR. GILLEN: Yes.

6 MR. ROTHSCHILD: Okay. And that's not part
7 of this document?

8 MR. GILLEN: Correct.

9 MR. ROTHSCHILD: Thank you.

10 THE COURT: And there are parts of the
11 meeting that came after the tape?

12 MR. GILLEN: No, there's nothing after, Your
13 Honor. Well, let me ask Mr. Nilsen.

14 BY MR. GILLEN:

15 Q. Mr. Nilsen, is there anything that occurred
16 at the board meeting after what's reflected in this
17 transcript?

18 A. Yes.

19 THE COURT: Sure looks like it, because it
20 has --

21 MR. GILLEN: Yes.

22 THE COURT: He's cut off in mid-sentence.

23 MR. GILLEN: Exactly.

24 THE COURT: And do I also understand,
25 Mr. Gillen, that there are -- that this is not a

1 continuous narrative, that there are, for example,
2 votes in the midst of this dialogue that were not
3 transcribed?

4 MR. GILLEN: Exactly, Your Honor. And I'm
5 going to try to get that out so you know exactly --

6 THE COURT: I heard that. I just wanted to
7 verify that.

8 MR. GILLEN: Yes, the votes are reflected in
9 the minutes. And that's --

10 THE COURT: I understand.

11 MR. GILLEN: All right. Good enough.

12 MR. ROTHSCHILD: Your Honor, to make sure
13 I'm clear, there is actually -- the tape includes
14 other parts of the meeting that are -- that precede
15 the part of the meeting where this transcript begins,
16 and that's not taped over or missed, it actually
17 exists, and so this is not everything that was taped.
18 Is that right?

19 MR. GILLEN: Yes.

20 THE COURT: But they're not germane to this
21 issue. Is that --

22 MR. ROTHSCHILD: Well, I'm not sure that's
23 correct, and I'm not --

24 THE COURT: Do we care?

25 MR. ROTHSCHILD: I just want to make sure

1 that the record is clear. This is not everything
2 that's on that physical tape.

3 THE COURT: I understand.

4 MR. GILLEN: Okay. Good enough.

5 THE COURT: Are you going to get into an
6 extended area? I was going to go until 4:45, but if
7 you think that you're going to get into a longer area,
8 we could adjourn.

9 MR. GILLEN: It's a good place for a break,
10 Your Honor, if it's okay with you.

11 THE COURT: All right. Why don't we then
12 call it a day, this shortened session. We will
13 reconvene for a full-day session at 9:00 a.m. tomorrow
14 morning, and we'll stand in recess until that time.
15 Thank you, all.

16 (Whereupon, the proceedings were adjourned.)

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CERTIFICATION

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

Dated in Harrisburg, Pennsylvania, this 21st day of October, 2005.

/s/ Lori A. Shuey
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