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

Tammy Kitzmiller, et al :
 :
 vs : 4:04-CV-002688
 :
 Dover Area School District, :
 et al :

BEFORE: Honorable John E. Jones, III
PROCEEDINGS: Bench Trial - **AFTERNOON SESSION**
DATE: Friday, October 21, 2005
PLACE: Courtroom No. 2, Ninth Floor
Federal Building - Harrisburg, PA
BY: Lori A. Fausnaught, RMR
U.S. Official Court Reporter

APPEARANCES:
For the Plaintiffs: Eric J. Rothschild, Esquire
Witold J. Walczak, Esquire
Stephen G. Harvey, Esquire
Thomas Schmidt, Esquire
For the Defendant: Patrick T. Gillen, Esquire

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1 (1:23 p.m., reconvene after luncheon recess.)

2 THE COURT: All right. Mr. Rothschild, you may
3 continue.

4 BY MR. ROTHSCHILD:

5 Q Dr. Nilsen, there came a time when you found out
6 that Mr. Buckingham wanted to put the curriculum change on
7 the October 18th agenda?

8 A Yes.

9 Q And that was to add intelligent design to the
10 curriculum?

11 A Reference to it, yes.

12 Q That intelligent design, that's what Mr. Russell
13 had told you was Thomas More's name for the creationism
14 issue?

15 MR. GILLEN: Objection, Your Honor. He's offering
16 a hearsay statement for the truth of the matter asserted.
17 And what's more, Mr. Russell's characterization, if you read
18 the document, is his characterization of the issues not
19 ours.

20 THE COURT: Well, the letter or the E-mail was
21 referred to without objection. So the question is couched
22 in the -- in the context of the letter.

23 MR. GILLEN: Okay. And my point, Judge, is simply
24 that the statement that Mr. Rothschild is referring to is
25 his description of the issue.

1 MR. ROTHSCHILD: Mr. Russell's.

2 MR. GILLEN: Yes.

3 MR. ROTHSCHILD: And that's how I couched my
4 question.

5 THE COURT: Well, if you take the question in
6 context, that intelligent design, that's what Mr. Russell
7 told you was Thomas More's name for creationism, I took it
8 as Mr. Rothschild referring to what Dr. Nilsen had received
9 via this E-mail. Why is that objectionable?

10 MR. GILLEN: Well, the only thing that I'm
11 intending to point out is when Mr. Russell says they
12 referred to the creationism issue as intelligent design,
13 that's his interpretation of the issue. Obviously from --
14 it's one of the issues.

15 THE COURT: I understand that, and I take it as
16 that.

17 MR. GILLEN: Okay.

18 THE COURT: And I don't take it for the truth of
19 what the Thomas More Center may have actually thought. It
20 is simply a reflection, and I think that was the gist of the
21 question of what was transmitted to him through this E-mail.

22 MR. GILLEN: Thank you very much.

23 THE COURT: All right. So noted. Was the question
24 answered? I don't think it was.

25 MR. ROTHSCHILD: It was not.

1 THE COURT: Do you want to read it back for us,
2 Lori, please?

3 (The record was read by the court reporter,
4 as requested.)

5 THE WITNESS: Could you highlight the -- what
6 sentence in this E-mail, please, you are referring to? He
7 speaks to -- the quote is they refer to the creationism
8 issue as intelligent design. That's what's in the E-mail,
9 yes.

10 BY MR. ROTHSCHILD:

11 Q Mr. Buckingham also wanted to add *Pandas* to the
12 curriculum?

13 A Yes.

14 Q That's the book that you agreed has at least one
15 creationist tenant on pages 99 to 100 of the book?

16 A Yes. It's also the book that the teachers at this
17 meeting had agreed would end up being a reference text and
18 had understood as being part of their curriculum.

19 Q And this is also the text which teaches children
20 that life was made by either God or aliens?

21 A I don't know that.

22 Q But it added the language of a master intellect.
23 Correct?

24 A I don't know that.

25 MR. ROTHSCHILD: Could you pull up page 85 of

1 *Pandas* please? Highlight the passage on the right side that
2 begins the strong analogy.

3 BY MR. ROTHSCHILD:

4 Q It refers there to life owes its origin to a master
5 intellect. Correct?

6 A Yes, it says that.

7 Q You agreed with me previously the only
8 understanding you could have of that term is it's either God
9 or aliens?

10 A Yes.

11 Q You actually objected to the way Mr. Buckingham was
12 putting this item on the agenda. Correct?

13 A Yes.

14 Q But you didn't stop it. Correct?

15 A Didn't stop what?

16 Q Stop the item from being put on the agenda.

17 A What item on the agenda?

18 Q The item to add intelligent design and *Pandas* to
19 the curriculum?

20 A Did I stop him from putting on the bio curriculum
21 recommendation?

22 Q Right.

23 A No.

24 Q And nobody else on the board did either. Correct?

25 A No. The reason we did not is the fact that the

1 curricular chair, or any board member for that matter, can
2 bring under miscellaneous any action. And knowing that he
3 had an interest in that, I preferred the board to know prior
4 to the agenda -- when they received the agenda prior to the
5 meeting what was going to happen.

6 So anytime someone tells me that they are going to
7 bring something up, even if I'm not supportive of it, I
8 prefer to put it on the agenda so individuals, the board
9 members and the community are aware of what's happening.

10 Q And ultimately it did come to a vote. Correct?

11 A Yes.

12 Q And a majority of the board supported it coming up
13 for a vote. Correct? They didn't delay it?

14 A Correct.

15 Q Okay. And that included Mr. Bonsell. Correct?

16 A Yes.

17 Q Now, you suggested to Mr. Buckingham that there be
18 a meeting of the curriculum advisory council?

19 A Yes.

20 Q And kind of like the one we saw documented in
21 Defendant's Exhibit 3, the April meeting?

22 A Yes.

23 Q But that didn't happen. Correct?

24 A Correct.

25 Q They were sent a memo with the change to the

1 curriculum information, but there was no meeting. Correct?

2 A No. His comment was he had thought he had already
3 received enough information from the curriculum committee
4 meeting and that the committee members had conveyed
5 information over the past six months, and he didn't see
6 another reason to hold another meeting and get the same
7 input that he has gotten over the past six months.

8 Q Well, you did get a little bit of feedback back
9 from the curriculum advisory committee. Right?

10 A Yes.

11 Q Mr. Baksa had prepared that memorandum that had two
12 comments by the curriculum advisory --

13 THE COURT REPORTER: Could you please slow down?

14 MR. ROTHSCHILD: I apologize.

15 BY MR. ROTHSCHILD:

16 Q Mr. Baksa had prepared that memorandum with the
17 couple of suggestions by the members of the curriculum
18 advisory committee?

19 A Yes. When Mr. Buckingham said he didn't want it
20 meeting again, I talked to Mr. Alan Bonsell, the president,
21 and I communicated to him that I was going to send the
22 information out to the curriculum committee anyway and he
23 supported that. In like fashion, we had two items that came
24 back.

25 Q And the two items that came back were, according to

1 policy, curriculum advisory committee should review changes
2 first before going to the board, which you have explained
3 you disagree with as a matter of policy. Right?

4 A I disagree that that is currently the policy.

5 Q Right. And also, hadn't been for sometime.

6 Correct?

7 A Correct.

8 Q But it certainly was practiced. Right?

9 A Yes.

10 Q And the second comment was, I disagree with the
11 highlighted statement. Maybe we should meet as a curriculum
12 committee. But there was no meeting of the curriculum
13 committee on this issue. Right?

14 A Not on the issue currently. There were curriculum
15 committee discussions on this issue over the past six
16 months.

17 Q Actual meetings?

18 A On the science curriculum? Yes.

19 Q On the biology curriculum?

20 A I can't speak to that specifically, no.

21 Q In any event, there was no meeting after this
22 request was made by a member of the curriculum advisory
23 committee?

24 A That's correct.

25 Q And no board member supported that occurring, did

1 they? No board member that voted for the change of the
2 biology curriculum.

3 A That's correct.

4 Q And you also thought that it was irregular to put
5 this item on the agenda when it hadn't been previously on a
6 planning meeting agenda. Correct?

7 A Yes.

8 Q As you've said now again, Mr. Buckingham said we've
9 had enough input over the last six months. Right?

10 A Correct. He ended up leaving -- as I stated in my
11 testimony yesterday, that he wanted to make sure that all
12 the board members that had been involved in the discussion
13 for the past six months had an opportunity to vote on it,
14 because he was under the understanding that two individuals
15 were not going to be on the board in the near future.

16 Q And those were Mr. Wenrich and Ms. Cleaver.
17 Correct?

18 A Correct.

19 Q And if they were replaced, you wouldn't have had --
20 the couple of board members that replaced them wouldn't have
21 had the whole history that had been going on since April.
22 Correct?

23 A That's correct.

24 Q Now, Mr. Wenrich actually, as you explained in your
25 direct testimony, didn't feel the same way. Correct?

1 A Same way as what?

2 Q As Mr. Buckingham, that he Mr. Wenrich needed to be
3 part of this decision. Isn't that right?

4 A I'm not sure I understand your question.

5 Q Mr. Wenrich was the movant on all of the motions to
6 delay consideration of this curriculum change. Correct?

7 A Yes.

8 Q Okay. So he actually thought it was a good idea to
9 involve all the relevant constituents, the teachers, the
10 curriculum advisory committee and the like?

11 A That's correct.

12 Q He didn't want this rushed. Correct?

13 A He wanted it to be revisited. Yes.

14 Q And when we talk about these last six months, I
15 think you actually said in your direct testimony, it sort of
16 goes back to the point where Mr. Buckingham distributed the
17 DVD's and the book. Right?

18 A Yes.

19 Q And that was the DVD's and the book from the
20 Discovery Institute?

21 A Yes.

22 Q And then he also was referring to the numerous
23 board meetings and comments by members of the community.
24 Correct?

25 A It covered that time period, yes.

1 Q And six months back from October, that takes us
2 back to February?

3 A About.

4 Q Okay. And so that period would have included the
5 board meetings in June where the newspapers had reported
6 that many religious statements were made by board members
7 including balancing evolution with creationism and 2,000
8 years ago a man died on a cross and other religious
9 statements. Correct?

10 A The newspapers reported that, yes.

11 Q And these discussions had occurred during these
12 past six months?

13 A Newspapers reporting those discussions, yes.

14 Q And those were the kind of religious statements
15 that Attorney Russell was referring to, wasn't it?

16 A Yes.

17 Q And this period also included the board meeting in
18 August when Buckingham, Harkins and Geesey had tried to
19 deprive the teachers and students of their biology textbook.
20 Right?

21 MR. GILLEN: Objection to the characterization.

22 THE WITNESS: I'll phrase it this way.

23 THE COURT: Wait. There's an objection, Doctor.

24 MR. GILLEN: Mr. Rothschild is asking whether the
25 board sought to deprive them of their text. They had a

1 text. The question is whether they were going to get
2 another text. If he rephrases the question precisely, I
3 would have no objection.

4 MR. ROTHSCHILD: I'll repeat and rephrase the
5 question.

6 BY MR. ROTHSCHILD:

7 Q This period included the August 2nd board meeting
8 in which board members Buckingham, Harkins and Geesey had
9 voted to deprive the students and teachers of the new
10 biology textbook recommended by the teachers. Correct?

11 A Yes.

12 Q Now, at the October 18th meeting Mrs. Spahr made a
13 statement in opposition to the curriculum change.

14 A Yes.

15 Q And she testified about that in court.

16 A Yes.

17 Q At that October 18th meeting did you state your
18 disagreement at that board meeting with anything Mrs. Spahr
19 said?

20 A No.

21 Q Now, at the meeting to approve the curriculum
22 change there were several versions being discussed.

23 A Yes.

24 Q And version B was the proposal of the
25 administration and the staff?

1 A Yes.

2 Q And it does not include intelligent design.

3 A That is correct.

4 Q And that was the one you supported. Correct?

5 A There were two we supported, B and C.

6 Q And the teachers indicated that they could live
7 with that?

8 A They could live with B and C.

9 Q And the board members who voted against the final
10 version of the policy, Mrs. Brown, Mr. Brown and
11 Mr. Wenrich, they actually indicated they would have voted
12 for versions B or C, as well. Is that correct?

13 A I don't remember that specific statement.

14 MR. ROTHSCHILD: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. ROTHSCHILD:

17 Q Do you recognize this document?

18 A Yes.

19 Q What is it?

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

22 Q And this was the -- these are the minutes of the
23 meeting where the change of the biology curriculum was
24 passed?

25 A Yes.

1 Q If you could turn to page 158 of that document, the
2 Bate stamp 158.

3 A I have it.

4 Q And it might require your review all the way
5 through 160. But this is a rather complicated set of
6 parliamentary maneuvers to put on the agenda different
7 versions of the change to the biology curriculum?

8 A Yes.

9 Q And if you could take a minute to review that and
10 tell me if I'm correct that the three ultimately dissenting
11 board members; Mrs. Brown, Mr. Brown and Mr. Wenrich all
12 indicated through their votes that they would support
13 versions B and C.

14 A I don't see any final vote on B or C. What I see
15 is motions to move the discussion or the vote to A -- I'm
16 sorry -- from A to B and C. There is no final vote on
17 either B or C.

18 Q Fair enough. So they were supportive of a vote
19 to -- they were supportive of moving the consideration from
20 A to versions B and C; Mr. Brown, Mrs. Brown and
21 Mr. Wenrich?

22 A Yes.

23 Q But that effort was defeated by other board
24 members. Correct?

25 A Yes.

1 Q And the other board members included Mr. Bonsell.
2 Correct?

3 A Yes.

4 Q He didn't support having a vote on versions B or C.
5 Correct?

6 A Correct.

7 Q Okay. He stood firmly behind a version that
8 included intelligent design?

9 A I can't speak to what he stood firmly behind. I
10 know he stood firmly behind what's reflected here.

11 Q And that was -- all of his votes indicate that the
12 only version that he would support was one that had
13 intelligent design. Correct?

14 A Yes.

15 Q Okay. So just to summarize, for votes B and C,
16 there is some indication that Mr. and Mrs. Brown and
17 Mr. Wenrich would have supported those versions. Correct?
18 They wanted the consideration to move to those versions?

19 A I'll state it the way you did in the second half of
20 your question. They voted to consider B and C. I can't
21 recollect, nor does the minutes reflect, how they would have
22 voted eventually on B and C.

23 Q And certainly, the administrators and the teachers
24 were supporting B and C?

25 A That's correct.

1 Q So for a board member that placed a premium on
2 consensus, B and C could have achieved that, couldn't it?

3 A I can't tell you that because we never got to
4 deciding to vote on B and C.

5 Q Certainly it would have brought the administrators
6 and the teachers into the fold. Correct?

7 A Yes.

8 Q Okay. And you describe Mr. Bonsell as someone, he
9 puts a premium on consensus. Correct?

10 A Yes.

11 Q But he blocked -- he joined other board members in
12 blocking every effort to even bring B and C to a vote.
13 Correct?

14 A To a vote, yes. But the concept behind C, no.
15 Meaning later on you'll note in the minutes the major
16 concept of C was note the Origins will not be taught, and
17 he's the individual seconded, I believe by Mr. Brown, that
18 he moves the origins of life will not be taught to A,
19 because he believed the major sticking point with the
20 professional staff was that the intelligent design was going
21 to be taught.

22 So his consensus effort, at least from my viewpoint
23 and understanding, is the fact that he was looking at
24 developing a consensus between the teachers and a majority
25 of the board by addressing their individual concern that

1 intelligent design was taught, and he thought he had
2 directly addressed their concern with the support of one of
3 the three, Mr. Brown.

4 Q But adding origins of life didn't actually meet the
5 teachers' concern that intelligent design not become part of
6 the curriculum?

7 A I think that's eventually what the interpretation
8 was. But I would hesitate to make an understanding that I
9 think at that time period he thought he had developed a
10 consensus that the teachers would be satisfied with it.

11 Q Dr. Nilsen, there is no way anybody could reach
12 that interpretation about the teachers' position from what
13 the teachers said at that October 18th meeting. Isn't that
14 right?

15 A I think you are going to have to ask Mr. Bonsell
16 that question.

17 Q We'll have the chance to do that. But certainly
18 Bertha Spahr got up there and stated her absolute opposition
19 to intelligent design. Correct?

20 A Yes.

21 Q After indicating she had engaged in compromise
22 after compromise, this was the one issue she couldn't
23 compromise on. Correct?

24 A That would be my understanding, yes.

25 Q And Mrs. Miller actually got up at a point during

1 the session to make clear that the teachers were not the
2 drafters of what was being put into place. Correct?

3 A You are going to have to be more specific than
4 that.

5 Q Didn't Jennifer Miller jump up at one point in
6 response to Mrs. Geesey's -- and I don't want to get into
7 who Mrs. Geesey's comment was directed at. But Ms. Miller
8 was adamant that the teachers not be construed to have been
9 the authors of the curriculum change that was being voted
10 into place?

11 A Yes.

12 Q Now, on the subject of origins of life, your
13 understanding is that refers to macroevolution. Correct?

14 A Yes.

15 Q And the origins of man?

16 A Yes.

17 Q And this curriculum change makes the -- makes not
18 teaching origins of life policy. Correct?

19 A Yes.

20 Q Teachers can't teach it now?

21 A Correct.

22 Q It's not just practice, it's policy?

23 A Correct.

24 Q Now, at the time this was passed there was very
25 little discussion about what intelligent design actually is.

1 Isn't that right?

2 A I can't speak to what the board did or what
3 Mr. Baksa did. I can only speak to what I did.

4 Q In terms of what you actually observed, there was
5 very little discussion of what intelligent design actually
6 is. Isn't that right?

7 A From my viewpoint of what I saw, again, I can't
8 speak to what was discussed in the curricular areas. I can
9 only speak to my responsibility. And I did not see anything
10 from my responsibility, although I can't speak for the board
11 or anybody else.

12 Q And you were at all of the board meetings.
13 Correct?

14 A At this time, yes.

15 Q So if there was discussion of what intelligent
16 design actually is, you would have heard it?

17 A Yes, at board meetings.

18 Q And there also wasn't any discussion about how this
19 would improve science education except for this idea that
20 there would be some balance. Right?

21 A I think the discussion was the board wanted
22 students to be aware of other theories, and one of the other
23 theories was intelligent design.

24 Q I'm going to ask you, do you remember that I asked
25 you at your deposition how the science curriculum has been

1 enhanced beyond how it previously existed before the change
2 in the curriculum?

3 A I remember the question.

4 Q If you could turn to page 93 of your January
5 deposition.

6 A I have it.

7 Q I asked you that question on lines two to four of
8 page 93.

9 A Yes.

10 Q And you answered, "Students prior to the change
11 only knew that there was one theory, Darwin's, and there
12 were students that held other theories. And those that were
13 priorly discriminated against now know that there are other
14 theories and can believe those other theories and not
15 believe the school district is discriminating against their
16 beliefs."

17 That's what you answered. Right?

18 A Yes.

19 Q Discriminating against students' beliefs. That's
20 what this policy was fixing. That was your answer, Dr.
21 Nilsen?

22 MR. GILLEN: Objection to the characterization of
23 his answer.

24 MR. ROTHSCHILD: I'll rephrase, Your Honor.

25 THE COURT: All right.

1 BY MR. ROTHSCHILD:

2 Q That was your answer to how this was enhancing the
3 science curriculum beyond how it stood before the curriculum
4 change, that it would mean that we -- that the district was
5 no longer discriminating against student beliefs?

6 A Yes.

7 Q I also asked you about the statement in the press
8 release that the statement and revised biology curriculum
9 together provided an opportunity for open and critical
10 discussion. Do you remember that?

11 A Yes.

12 Q And you testified that there is critical discussion
13 being allowed for the gaps part of this but not for
14 intelligent design. Correct?

15 A Correct.

16 Q There's no questions allowed on that?

17 A Correct.

18 Q In your experience as an educator, the only time
19 students are directed not to discuss topics and teachers are
20 not permitted to comment on topics with students is for
21 issues of political affiliation, sexual education, issues
22 that are highly politically charged and religion. Correct?

23 A That was examples I gave you. I also told you that
24 there may also be items that are far afield of what is in
25 the planned courses and/or not in the standards.

1 Q And you actually testified today about that, that
2 you discussed with Jen Miller what would happen if questions
3 were asked. Right?

4 A Yes.

5 Q And you answered to her well, you handle it like
6 everything else that's not in the curriculum; you don't have
7 to answer those questions. Right?

8 A No. What I think I believe I said is that the
9 teachers would say that was a good question, not what we're
10 teaching at this time period. You may refer to your own
11 individual research and/or your parents.

12 Q Okay. But in any event, this is -- this item here
13 is not like things that are outside the curriculum. This is
14 something that's inside the curriculum. Right?

15 A I'm not sure I understand the question.

16 Q Well, we are in agreement that this particular
17 issue that students are not allowed to be asked about is
18 part of the curriculum. Right?

19 A Yes.

20 Q And that's pretty unusual that something that's
21 actually in the students' curriculum can't be discussed by
22 the students or the teachers. Would you agree with that?

23 A Yes.

24 Q Now, there came a time when this lawsuit was filed.
25 Correct?

1 A Yes.

2 MR. ROTHSCHILD: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. ROTHSCHILD:

5 Q Do you recognize this document, Dr. Nilsen?

6 A Yes.

7 Q And what is it?

8 A It's a letter from Pepper Hamilton signed by a
9 gentleman by the name of Eric Rothschild to Mr. Russell, our
10 solicitor.

11 Q And he showed you this document after he received
12 it?

13 A Yes.

14 Q It's dated December 15th, 2004?

15 A Yes.

16 MR. ROTHSCHILD: Just for the record, this is
17 P-758.

18 BY MR. ROTHSCHILD:

19 Q And in that letter I made you aware of Pepper
20 Hamilton, the ACLU and American United's representation of
21 certain parents of children in the Dover Area School
22 District?

23 A I believe you actually made Mr. Russell aware of
24 that and eventually made me.

25 Q Fair enough. And I also made Mr. Russell aware

1 that we felt we had a very strong case that this violates
2 the First Amendment and that if parents prevail in the
3 lawsuit there would be recovery of attorneys' fees for the
4 prevailing parties. Right?

5 A Yes.

6 Q All of that is consistent with what Mr. Russell
7 told you in that August E-mail we looked at. Correct?

8 A Yes.

9 Q And then I went on to say the plaintiffs and their
10 attorneys would prefer to resolve this matter amicably.
11 Correct?

12 A In your third paragraph you state that, yes.

13 Q And going over to the next page, in the first full
14 paragraph it states, "If the defendants agree to resolve
15 this matter in this fashion, which is nothing more than what
16 the law otherwise requires, the plaintiffs and their
17 attorneys will agree not to apply for the attorneys' fees
18 and expenses to which they otherwise would be entitled."
19 Correct?

20 A That's what it says there, yes.

21 Q And you were made aware of that offer by your
22 solicitor. Correct?

23 A Yes.

24 Q But the district stayed with its policy. I'm
25 sorry. Let me withdraw that. Did you make the board aware

1 of this letter?

2 A Yes.

3 Q But the -- the board did not take the opportunity
4 to present it in this letter?

5 A That is correct.

6 Q It went ahead with the -- with the -- with
7 implementing the policy?

8 A Yes.

9 Q And the district retained Thomas More to represent
10 it?

11 A Yes.

12 Q And I assume that yourself and the board did some
13 due diligence to find out about Thomas More before it
14 engaged Thomas More?

15 A Yes.

16 Q You did some research to find out their
17 qualifications?

18 A Yes.

19 Q Went to their web site?

20 A I can't speak to what efforts were done. I know
21 that the board president designated a board member to do
22 research on what would be our recommended plaintiff counsel.

23 Q And the board president was Mr. Bonsell?

24 A Excuse me?

25 Q The board president was Mr. Bonsell?

1 A No. I believe at the time period we were
2 discussing this, it actually was Mrs. Harkins.

3 Q Who did she designate to --

4 A Mr. Bonsell.

5 Q Now, you talked about how you -- you talked about
6 how you made an effort to go on the Gary Sutton Show to
7 communicate something that the teachers wanted you to
8 communicate. Is that right?

9 A Yes.

10 MR. ROTHSCHILD: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. ROTHSCHILD:

13 Q I'm showing you what's been marked as Defendant's
14 Exhibit 172, a collection of documents. And I would like
15 you to turn to the page Bate stamped 359.

16 A I have it.

17 Q Okay. This is what the science department asked
18 you to tell Gary Sutton?

19 A Yes.

20 Q That included they had acted in a professional
21 manner, they made every attempt to maintain the integrity of
22 the Pennsylvania state science standards and the
23 Constitution of the United States of America. Correct?

24 A Yes.

25 Q And you then went on the Gary Sutton Show?

1 A Yes.

2 Q And if you could turn to the next page.

3 A Yes.

4 Q And this is your statement that you made on the
5 Gary Sutton Show?

6 A Yes.

7 Q And you did communicate that the science department
8 staff acted professionally?

9 A Yes.

10 Q And you did communicate, as they wanted, that they
11 had made every attempt to maintain the integrity of the
12 Pennsylvania state science standards?

13 A Yes.

14 Q But you did not communicate their statement that
15 they had made every attempt to maintain the integrity of the
16 Constitution of the United States.

17 A That's correct.

18 Q Now, you testified today that you had given
19 instructions to put the books in the library. Correct?

20 A Yes.

21 Q But that wasn't your initial instructions about
22 what to do with the book, was it?

23 A No.

24 MR. ROTHSCHILD: Can I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. ROTHSCHILD:

2 Q I'm showing you what's been marked as Plaintiff's
3 Exhibit 109. Do you recognize this document?

4 A Yes.

5 Q And this -- what is it?

6 A It's a letter or a memo from Mr. Baksa to Bert
7 Spahr.

8 Q What does it say?

9 A "Please place *Of Pandas and People* in the biology
10 classrooms and make available for students."

11 Q And that was something you were copied on?

12 A Yes.

13 Q And that's dated December 7th, 2004?

14 A Yes.

15 Q And then the lawsuit was filed, correct, on
16 December 14th or 15th?

17 A Yes.

18 Q And then on December 22nd you told the librarian
19 that the book should be put in the library. Correct?

20 A Yes.

21 Q After the lawsuit?

22 A After I realized two things. One, we had
23 difficulty finding a place in the classroom, as well as I
24 didn't know we had a section in the library dealing with
25 this issue.

1 Q And the section was a section on creation and
2 evolution?

3 A Yes.

4 Q And the librarian made you aware of that?

5 A Yes.

6 Q And she thought those books belonged there?

7 A She didn't mention thinking that the *Panda* books
8 belonged there, no. She didn't make any comment about that
9 at all.

10 Q That was your thoughts?

11 A Yes.

12 Q You talked about giving the students the
13 opportunity to opt out of the -- of hearing the statement
14 read in biology class. Correct?

15 A Yes.

16 Q And the other examples, the circumstances in which
17 students are allowed to opt out that you identified are, I
18 guess you would say, military recruiting. Correct?

19 A Yes.

20 Q This surely doesn't fall under that?

21 A I'm sorry. What's the question?

22 Q The statement doesn't fall under military
23 recruiting. Correct?

24 A No.

25 Q Sex ed. basically; they were allowed to opt out of

1 that?

2 A Yes.

3 Q This doesn't fall under that?

4 A No.

5 Q Materials relating to planned parenthood --

6 A No.

7 Q -- they are allowed to opt out from receiving
8 those?

9 A No. I'm sorry?

10 Q I'm not sure what -- that was one of the examples
11 that you gave when they're --

12 A Yes.

13 Q This was not -- this statement does not have
14 anything to do with planned parenthood?

15 A No.

16 Q Or the subject of abortion?

17 A No.

18 Q Or reach any kind of issues of reproduction or
19 contraception?

20 A No.

21 Q And dissections, that was another thing that
22 students were allowed to opt out of?

23 A They are allowed to opt out of anything the parent
24 chooses. But yes, that's an example.

25 Q Okay. And this obviously doesn't fall under that?

1 A No, it does not.

2 Q The last thing you said they could opt out from was
3 issues relating to religion. Correct?

4 A Yes.

5 Q We talked about -- you talked about the newsletter.
6 If you could pull up Exhibit 127. That was something that
7 was created by Mr. Bonsell and the lawyers at Thomas More.
8 Correct?

9 A Yes.

10 Q But that wasn't entirely -- that wasn't entirely
11 from Thomas More's pro bono representation, the district
12 actually had to pay for it?

13 A Not the letter itself but the mailing of the
14 letter.

15 Q And that cost the district about \$1,000?

16 A Yes.

17 MR. ROTHSCHILD: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. ROTHSCHILD:

20 Q Dr. Nilsen, I'm going to give you a copy of the
21 newsletter and also the answer filed in this case by
22 defendants. That's Exhibit P-120.

23 Dr. Nilsen, if you could go to the second page of
24 the newsletter and look at the section entitled quotables.
25 There's a quote from Rick Santorum. Right? "The Dover Area

1 School District has taken a step in the right direction by
2 attempting to teach the controversy of evolution." Right?

3 A Yes.

4 Q Then at the bottom of the page there's a quote,
5 "Where topics are taught that may generate controversy such
6 as biological evolution, the curriculum should help students
7 to understand the full range of scientific views that
8 exist."

9 It's attributed to conference report from the No
10 Child Left Behind Act of 2001. That's sometimes called the
11 Santorum Amendment. Is that right?

12 A Yes.

13 Q And the district has actually relied upon that as
14 support for what it's doing. Correct?

15 A Yes.

16 Q And you understand that this is not actually part
17 of the No Child Left Behind Act. It's not part of the law.
18 Correct?

19 A It's not part of the law, no.

20 Q And in the answer that defendants filed, Exhibit
21 P-120, there's again a reference to this language from the
22 Santorum Amendment on page two of the answer, second full
23 paragraph.

24 A Okay.

25 Q And this is an answer you reviewed before it was

1 filed with the Court. Correct?

2 A Yes.

3 Q It says here, "Defendants affirmatively state that
4 DASD's resolution" -- and that's the Dover Area School
5 District's resolution. Right?

6 A Yes.

7 Q -- "adopted on October 18th, 2004 reflects the
8 intent of the Santorum Amendment to the No Child Left Behind
9 Act of 2001 which was adopted by the U.S. Senate, 91 to 8,
10 and included in the final conference report as follows."

11 And you quote the same language that you had in the
12 newsletter, "Where topics are taught that may generate
13 controversy, paren, such as biological evolution, closed
14 paren, the curriculum should help students to understand the
15 full range of scientific views that exist, why such topics
16 may generate controversy and how scientific discoveries can
17 profoundly affect society."

18 So there again, the district is relying on the
19 Santorum Amendment. Correct?

20 A Yes.

21 MR. ROTHSCHILD: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. ROTHSCHILD:

24 Q Dr. Nilsen, I have handed you Exhibit P-786, which
25 is titled the No Child Left Behind Act of 2001, conference

1 report to accompany HR, House Resolution, one. Do you see
2 that?

3 A Yes.

4 Q If you could turn to the next page and go down to
5 the second full paragraph. Now, you see the language that's
6 relied upon in the answer and in the newsletter, Where
7 topics are taught that may generate controversy, that's
8 actually the second sentence of that paragraph. Correct?

9 A Yes.

10 Q Could you read the first sentence of that paragraph
11 into the record?

12 A "The Conference recognizes that a quality science
13 education should prepare students to distinguish the data
14 and testable theories of science from religious or
15 philosophical claims that are made in the name of science."

16 Q And that's not something that the Dover Area School
17 District communicated to its citizens in the newsletter.
18 Correct?

19 A That sentence was not in the newsletter, no.

20 Q It's not something that was put in the answer as
21 evidence to what the District's intent was in passing this
22 policy. Correct?

23 A That's correct.

24 Q Dr. Nilsen, you have argued, as have your attorneys
25 and members of the board in depositions, that what you're

1 doing with this policy is not teaching. Correct?

2 A That's correct.

3 Q You read this four paragraph statement to the
4 students, but it's not teaching?

5 A That's correct.

6 Q And you heard Ms. Miller talk about it and she
7 disagrees with that. Correct?

8 A Yes.

9 Q You're not a science teacher like Ms. Miller?

10 A No.

11 Q You were a history teacher. Correct?

12 A That's correct.

13 Q Let me ask you this. If students in Dover Area
14 School District were told in 1066 William the Conqueror
15 invaded England and nothing more, is that teaching?

16 A Depends on what happens around that individual
17 statement.

18 Q Just part of European history, but it's the only
19 thing they are told about William the Conqueror invading
20 England.

21 A Again, it goes back to the pedological question,
22 being if it's done in isolation, if it's done in the context
23 of what's being presented, if it's just a random statement,
24 no, it's not teaching.

25 Q If they are being taught European history but the

1 only thing they're being told about that set of facts is in
2 1066 William the Conqueror invaded England, is that
3 teaching?

4 A No.

5 Q If students are told about the Declaration of
6 Independence this one fact; Thomas Jefferson wrote the
7 Declaration of Independence, is that teaching?

8 A As I've defined teaching, no.

9 Q If students are told that William Jennings Bryan
10 represented the state of Tennessee in the Scope's monkey
11 trial, and that's all they are told about William Jennings
12 Bryan, is that teaching?

13 A No.

14 Q If they're told that American foreign policy was
15 characterized as isolationist before World War II, is that
16 teaching?

17 A As I've defined it, no.

18 Q If they are told that John Wilkes assassinated
19 Abraham Lincoln, is that teaching?

20 A No.

21 Q They are told that John Jay was the first chief
22 justice of the United States, is that teaching?

23 A I continue to answer it in the same way. As I have
24 defined teaching, no.

25 Q If they are taught about the presidency of Franklin

1 Delano Roosevelt and they are told only the following
2 about -- and they are taught a lot about Franklin Roosevelt,
3 but they are taught only this about the court packing
4 episode; in 1937 Franklin Delano Roosevelt tried to add
5 several members to the Supreme Court bench and many people
6 opposed it because they thought it was unconstitutional, is
7 that teaching?

8 A Again, as I've defined it.

9 Q And similarly, you stand by your position that the
10 statement read to the students before the class on evolution
11 starts is not teaching?

12 A It's learning without question. But as I've
13 defined it, teaching? No.

14 Q But it's definitely learning, isn't it, Dr. Nilsen?

15 A Yes.

16 Q Students are learning when they hear that
17 statement?

18 A Yes.

19 MR. ROTHSCHILD: I have no further questions, Your
20 Honor.

21 THE COURT: Thank you, Mr. Rothschild. Mr. Gillen,
22 redirect.

23 REDIRECT EXAMINATION

24 BY MR. GILLEN:

25 Q Dr. Nilsen, is teaching a term of art in the

1 educational profession?

2 A Yes.

3 Q And what do educators mean when they use that term
4 of art?

5 MR. ROTHSCHILD: Your Honor, I would just object to
6 state that they are trying to treat this as expert
7 testimony.

8 MR. GILLEN: He's the superintendent with a Ph.D.
9 in education.

10 MR. ROTHSCHILD: He's not been -- he's not been
11 offered or qualified as an expert in this case. I have no
12 objection to him giving his opinion or understanding, but it
13 should not be treated as expert testimony.

14 THE COURT: I think that's the point. I think he's
15 qualified to answer it. I think your objection goes to the
16 weight that the Court should give it. So I'll overrule the
17 objection. I'll let him answer. I understand your point.

18 THE WITNESS: There are basically four components
19 to teaching; one specifically behavioral objectives;
20 secondly, specific learner behaviors or outcomes; thirdly,
21 materials used; and fourthly, assessment based on the
22 behavioral objectives.

23 BY MR. GILLEN:

24 Q Thank you. Mr. Rothschild has mentioned that an
25 individual, Mr. Reeser, spoke at the March 26th, 2003 board

1 retreat, and he's also pointed out that Mr. Reeser is the
2 individual who destroyed a display in a science classroom in
3 the Dover Area School District.

4 Did you tell Mr. Reeser anything when you learned
5 he had done that?

6 A Yes. I brought him in my office and told him if he
7 continued behavior like that he would be terminated.

8 Q At the time you received the Peterman memo, did you
9 have the information that Jen Miller provided to this Court
10 in her testimony in court?

11 A No.

12 Q At the time you received the Peterman memo, was
13 that the only information you had about what teachers taught
14 in the biology class?

15 A Yes.

16 Q Mr. Rothschild has asked you about the Discovery
17 Institute. During the period that has been the subject of
18 your testimony, did you learn anything about the Discovery
19 Institute?

20 A I learned that they were a scientific think-tank.

21 Q Mr. Rothschild has asked you certain questions
22 about the board issues, documents that were produced late in
23 this litigation by you. I want to ask you a few other
24 questions.

25 When you found those documents, Rich, did you

1 realize that they were inconsistent with your recollection
2 as testified to in your depositions?

3 A Yes.

4 Q Did you turn them over nonetheless?

5 A Yes.

6 Q And why did you do that?

7 A I'm honest.

8 Q As you sit here today, do you recall anything about
9 the term creationism being mentioned in either the 2002 or
10 2003 board retreats?

11 A No, I did not, much like neither did the Browns or
12 Mrs. Callahan.

13 Q Had you looked at the text of --

14 MR. ROTHSCHILD: Your Honor, move to strike. I'm
15 not sure what he even based that on. They testified in this
16 court -- Ms. Callahan testified in this court of a
17 recollection of that.

18 MR. GILLEN: The record will speak for itself.
19 He's speaking to his recollection of Jen Miller's testimony.

20 THE COURT: Deny the motion to strike. It's the
21 Court's recollection that controls. My recollection may
22 comport with yours and I understand your point, but I'm not
23 going to strike it. It's his testimony. I don't take that
24 as controlling. I'll weigh the evidence and make a
25 determination.

1 You can proceed.

2 BY MR. GILLEN:

3 Q Mr. Rothschild has drawn your attention to certain
4 portions of the text of *Pandas*. Had you reviewed those
5 prior to seeing them here in court today?

6 A No.

7 Q As you sit here today, do you believe that *Pandas*
8 is a creationist text?

9 A No. If it was a creationist text, the teachers
10 would not have accepted it as a reference.

11 Q Mr. Rothschild has characterized the vote held on
12 August 2nd, 2004 as a vote to deprive the students of their
13 text. Did the students have a biology text at the time of
14 the August 2nd vote?

15 A Yes.

16 Q Are you aware of the copyright of that text?

17 A Yes, 1998.

18 Q Did you ever believe that the students would not
19 get the biology text recommended by the science faculty?

20 A No. In fact, my statement to the board was the
21 fact that when they eventually agree on the text it would
22 end up being mid September when we would start with the
23 teachers using two different texts. There was never a
24 perception that we would not get a new text.

25 Q What was the actual outcome of that vote on

1 August 2nd, 2004?

2 A Five/three for the text.

3 Q Mr. Rothschild has drawn your attention to the fact
4 that it is unusual for a reference text to be specifically
5 referenced in the curriculum. Why is it specifically
6 referenced?

7 A The only reason it was referenced was because the
8 concern of the teachers and my attempt to convey my support
9 and legal coverage for them.

10 Q Mr. Rothschild has drawn your attention to the fact
11 that besides the book of *Pandas*, the other texts that were
12 donated were not listed in the revised statement which was
13 read to students in June of 2005. Why were those individual
14 texts not listed in the statement?

15 A Because I think they would end up being -- first of
16 all, I think there were a lot of different texts. We were
17 just referring to the group of texts.

18 Q Mr. Rothschild has questioned you at some length
19 about Defendant's -- Plaintiff's Exhibit 70. Would you look
20 at that, please?

21 A Could you tell me what it is?

22 Q Certainly. It's that E-mail.

23 A I have it.

24 Q Rich, would you tell us what was your purpose in
25 sharing that document with the teachers?

1 A To address their concerns about the legality of the
2 *Of Pandas and People* book.

3 Q You say address, were you trying to allay?

4 A Excuse me?

5 Q When you say address, were you trying to allay?

6 A Yes.

7 Q Mr. Rothschild asked you if the document had a
8 *Pandas* in it, and you responded it did not. Does the E-mail
9 reference text?

10 A Yes. It references it in two places. In fact,
11 this is an answer to questions that I had conveyed to him.
12 So I think it was pretty much assumed when he was answering
13 my questions what he was referring to.

14 Q Do you have an understanding concerning what text
15 is being referenced?

16 A Yes. *Of Pandas and People*.

17 Q Mr. Rothschild has pointed out that in that E-mail
18 Mr. Russell points to some difficulties. Did you have a
19 sense for the nature of Mr. Russell's concerns?

20 A Yes.

21 Q What were they?

22 A Media.

23 Q Mr. Rothschild has pointed out that Mr. Russell
24 pointed to some difficulties. Did you have an understanding
25 concerning whether Mr. Russell had said it was unlawful to

1 use these texts?

2 A Nowhere did he say it was unlawful.

3 Q You've -- Mr. Rothschild has asked you about Bill
4 Buckingham requesting that you put the board curriculum
5 version of the proposed curriculum change on the agenda for
6 the October 4th, 2004 board meeting. Could you stop
7 Mr. Buckingham from bringing it up?

8 A No. In fact, that's why I put it on the agenda,
9 because I knew if I didn't put it on the agenda he was going
10 to bring it up under miscellaneous.

11 Q Did putting it on the agenda mean it would pass?

12 A No.

13 Q On the night of the meeting did you believe that
14 the board curriculum committee version would pass?

15 A No.

16 Q Did you believe that the final result of the voting
17 process on October 18th, 2004 would be one that the teachers
18 could live with as the meeting began?

19 A I'm sorry. Could you ask that question again?

20 Q Sure. Well, let me ask it this way, Rich.

21 Did you have a sense for what version of the
22 proposed curriculum change would pass?

23 A Yes. I believed we would end up having C pass.

24 Q And that is the version the teachers have said they
25 could live with?

1 A Yes.

2 Q Is it correct that you made a statement to the
3 teachers to that effect?

4 A Yes. In fact, I communicated to them that when the
5 vote was successful with C that I wanted to make sure that
6 the decorum was positive because I envisioned some comments.

7 Q Mr. Rothschild has drawn your attention to the note
8 appended at the foot of the curriculum underneath the item
9 that's produced this litigation to the effect that origins
10 of life are not taught.

11 Do you have an understanding concerning whether the
12 teachers in Dover Area High School ever taught origins of
13 life?

14 A They never have.

15 Q Do you have an understanding concerning the purpose
16 of making that note to the curriculum?

17 A Yes. Mr. Bonsell wanted to reassure the teachers
18 that they would not in the future have to teach the origins
19 of life.

20 Q Mr. Rothschild has asked you some questions about
21 the movement of the text *Of Pandas* into the library. I want
22 to ask you, did you move the text to the library because of
23 the lawsuit or because of the practical considerations you
24 have described?

25 A I moved it because the practical considerations,

1 and I also thought it was educationally appropriate there.

2 Q Did you think that *Of Pandas* should be put in the
3 library because you thought *Of Pandas* was a creationist
4 text?

5 A No.

6 Q Did you allow the opt-out policy of Dover High
7 School to apply in this case because you believed
8 intelligent design was a religious assertion?

9 A No.

10 Q Mr. Rothschild has drawn your attention to portions
11 of the senate report requiring -- or indicating that it is
12 good education to distinguish scientific from religious or
13 other philosophical assertions.

14 Did you believe that intelligent design was a
15 religious or philosophical assertion?

16 A No.

17 Q What kind of assertion did you see that theory to
18 be advancing?

19 A I think intelligent design is science.

20 MR. GILLEN: I have no further questions, Your
21 Honor.

22 THE COURT: All right. Thank you, Mr. Gillen.
23 Mr. Rothschild, recross.

24 RE-CROSS-EXAMINATION

25

1 BY MR. ROTHSCHILD:

2 Q Doctor Nilsen, you just expressed that you think
3 intelligent design is science. Correct?

4 A Yes.

5 Q Now, do you remember at your deposition I asked you
6 your understanding of what intelligent design was?

7 A Which one? Is that the January one?

8 Q Yes.

9 A I remember you questioning it. I don't remember
10 the answer.

11 Q Why don't we turn to page 16 of your deposition?
12 Turning your attention to page 16, line two. I asked you
13 Mr. -- Mr. Nilsen. I forgot to use your title of doctor.
14 "Mr. Nilsen, the draft resolution uses the term intelligent
15 design. What do you understand intelligent design to mean
16 as used in this resolution?" You asked, "Which resolution?"
17 I asked, "The resolution that is the final resolution that
18 is set forth in the complaint." You answer, "Scientifically
19 evolution has a design." I asked, "Anything else?" You
20 said, "No." And I asked you, "Where did you gain that
21 understanding?" You said, "In discussions I have had with
22 numerous individuals." I asked, "Can you identify those
23 individuals?" You said, "Counsel and board members." I
24 asked, "Anybody else?" You said, "To my recollection, no."

25 So that was the extent of your understanding of the

1 scientific nature of intelligent design several months after
2 the resolution had been passed?

3 A In January, yes. Subsequent to that, obviously
4 I've learned a lot more.

5 Q Okay. But at that time that was your full
6 understanding?

7 A Yes.

8 Q And your full understanding was based on what board
9 members told you, who don't have a scientific background.
10 Correct?

11 A That's correct.

12 Q And counsel. Correct?

13 A Yes.

14 Q And it was inconsistent with the understanding of
15 the teachers in your district who had communicated that they
16 didn't believe intelligent design was science. Correct?

17 A Yes.

18 Q And they, as we've discussed, are the science
19 education experts in your community?

20 A Yes.

21 Q You testified that the reference to *Pandas* was
22 placed for the teachers' benefit. Correct? The reference
23 to *Pandas* in the curriculum was actually put in there to
24 protect the teachers.

25 A Yes.

1 Q Now, there was a board curriculum committee meeting
2 on October 7th where the amendment was discussed. Did you
3 attend that meeting?

4 A The October 7th meeting?

5 Q Right.

6 A Yes.

7 Q Let me show you a document. This one is marked as
8 P-81.

9 MR. ROTHSCHILD: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. ROTHSCHILD:

12 Q Do you recognize this document?

13 A Yes.

14 Q Okay. And is this a memorandum regarding proposed
15 curriculum changes being discussed by the board curriculum
16 council meeting?

17 A Yes.

18 Q Were you at this meeting?

19 A Not that I remember, no.

20 Q It appears that people who were at this meeting are
21 members of the board curriculum council meeting.

22 A Yes.

23 Q And the teachers have testified in this case that
24 they were not at this meeting where the curriculum change
25 was discussed, and you have no reason to dispute that, do

1 you?

2 A I have no reason to state one way or another.

3 Q And here, without your participation, there is
4 already a reference to including *Of Pandas and People* as a
5 reference source in the curriculum. Correct?

6 A Could you please tell me where that is?

7 Q At the bottom of page -- section B, concerns to be
8 addressed, item four.

9 A Okay.

10 Q That's what it says, right, under materials and
11 resources in the curriculum, *Of Pandas and People* be cited
12 as a reference source.

13 A Okay.

14 Q That was what the board curriculum committee was
15 discussing at a meeting that you didn't participate in.
16 Correct?

17 A That's correct. But that doesn't mean that that
18 had not been a conversation that I had had with Mr. Baksa
19 when this whole process was evolved. When we were talking
20 about the *Pandas* book being a reference, all the way back to
21 when the teachers accepted it in August, I'm sure I had
22 conversations about where it would be placed in the
23 curriculum when Mr. Baksa was going through that process.

24 I'm sure, but I can't be specific, I would have had
25 conversations that if teachers had a concern about it, a

1 good place to put it would end up being in the reference
2 section.

3 Q Let's be clear here. We're not talking about the
4 reference section or anything about the library. We're
5 talking about whether *Of Pandas and People* would be cited as
6 a reference source in the curriculum?

7 A That's what I'm talking about.

8 Q Okay. And you're suggesting that that was already
9 a thought in your mind and in Mr. Baksa's mind?

10 A We were -- yes.

11 Q Now, you are aware that version B of the proposed
12 curriculum change that was represented as being the product
13 of the administration and staff, that was created before
14 this October 7th meeting?

15 A I don't offhand know the exact date it was created.

16 Q We'll get to that in a moment. You said you
17 couldn't stop Mr. Buckingham from putting the curriculum
18 change on the agenda. Right?

19 A No. What I said is I couldn't stop him from
20 bringing up at the agenda -- or during the board meeting.
21 That was my comments.

22 Q At least three board members were advocates of
23 delaying the vote on it. Correct?

24 A Yes.

25 Q And any collection of five board members could have

1 stopped the curriculum change coming to a vote at that
2 meeting. Correct?

3 A Yes.

4 Q So any combination of Ms. Cleaver, Ms. Yingling,
5 Ms. Geesey, Ms. Harkins and Mr. Bonsell; any two of those
6 five could have joined the Browns and Mr. Wenrich to stop
7 the curriculum change from being voted on at that meeting.
8 Correct?

9 A Yes.

10 Q But they didn't. Correct?

11 A That's correct.

12 MR. ROTHSCHILD: Could I have one moment, Your
13 Honor?

14 THE COURT: You may.

15 (pause.)

16 MR. ROTHSCHILD: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MR. ROTHSCHILD:

19 Q Dr. Nilsen, what I have shown you is marked
20 Plaintiff's Exhibit 73. This is a memo from Mr. Baksa of
21 the board curriculum committee dated September 20th, 2004
22 regarding the biology curriculum.

23 A Yes.

24 Q He says, Attached is the recommended curriculum
25 change for biology. Correct?

1 A Yes.

2 Q He says, The changes were reviewed by the science
3 department. Correct?

4 A Yes.

5 Q So this is what administration was recommending to
6 the board curriculum committee. Right?

7 A From the biology teachers.

8 Q Well, let's be specific on the language. It says
9 here's the recommended curriculum change for biology. And
10 the changes were reviewed by the science department. Right?

11 A Yes.

12 Q It doesn't say it was recommended by the science
13 department.

14 A To be perfectly clear, I'm somewhat hesitant in the
15 specificity of those comments. You would have to ask
16 Mr. Baksa that.

17 Q Fair enough. But it certainly did constitute the
18 recommendation from administration. Correct?

19 A It doesn't say that anywhere here.

20 Q It says recommended curriculum change, and it's
21 coming from Mr. Baksa. Right?

22 A Yes.

23 Q If you could turn to the next page. It says that
24 students will be made aware of gaps in Darwin's theory and
25 of other theories of evolution. Correct?

1 A Yes.

2 Q And under materials and resources, there is nothing
3 mentioned there. Correct?

4 A Which Bate stamp are you looking at?

5 Q I'm looking at 29, what was attached to 28. The
6 other page there, Dr. Nilsen, I think is just an extra page.
7 It doesn't have a Bate stamp on it.

8 A That's why I asked, because that does say *Of Pandas*
9 *and People* on it.

10 Q I understand. It also says intelligent design. We
11 know that wasn't the recommendation.

12 A I wanted to make sure you and I were clear.

13 Q Fair enough. Looking at the Bate stamp 29, it says
14 that students will be made aware of gaps in Darwin's theory
15 and of other theories of evolution. And nothing under
16 materials and resources. Correct?

17 A That's correct.

18 MR. ROTHSCHILD: I have no further questions, Your
19 Honor.

20 THE COURT: All right. That will conclude your
21 testimony, Doctor. We thank you. You may step down.

22 (Witness excused.)

23 THE COURT: We have quite a few exhibits. Counsel,
24 why don't you approach, please for a moment?

25 (The following occurred at sidebar between

1 the Court and counsel:)

2 THE COURT: Yesterday you were talking about
3 breaking for an expert, but I guess --

4 MR. GILLEN: In fact, I'll put on the record now we
5 will not be bringing him on.

6 THE COURT: So what's your pleasure?

7 MR. ROTHSCHILD: Can we put on the record who it
8 was?

9 MR. GILLEN: Sure. Dick Carpenter.

10 THE COURT: Let's put Mr. Rothschild there on the
11 other side. Okay. Who do you have next?

12 MR. GILLEN: Baksa.

13 THE COURT: Well, why don't we take our break now,
14 if that works for everybody.

15 MR. GILLEN: I think that's a good suggestion. Do
16 you want to get these in?

17 THE COURT: Yeah, I would rather keep moving and
18 not get tied up with exhibits. We could probably take these
19 on Monday, if that's alright with everybody unless you --

20 MR. GILLEN: No. That's fine with me.

21 MR. ROTHSCHILD: Yes.

22 THE COURT: How long do you want to go? Do you
23 have any airplane issues?

24 MR. GILLEN: I don't. Thanks for asking, Judge.
25 I'm here unfortunately.

1 THE COURT: I would say 4:30. I don't want to beat
2 this to death today unless we're drastically behind. Do you
3 want to try to pick up some more time at the end of the day,
4 which I hate to do on Friday but --

5 MR. GILLEN: No way.

6 THE COURT: Liz is making me go later.

7 MR. GILLEN: No way, Judge. 4:30 is fine with me.

8 THE COURT: Liz has the stick out. She's afraid
9 we're getting behind. I, of course, don't get concerned
10 about these things. All right. We'll go to 4:30. Let's
11 take our break now for the afternoon and take it up with
12 Baksa after that. Okay.

13 (Discussion held at sidebar between the Court
14 and counsel was concluded.)

15 THE COURT: All right. We'll take our afternoon
16 break at this point and we'll take the defendant's next
17 witness at the end of the 20 minute break, and we'll go
18 until approximately 4:30 this afternoon. We'll stand in
19 recess for 20 minutes.

20 THE CLERK: All rise.

21 (Recess was taken from 2:35 p.m. to 2:55
22 p.m.)

23 THE COURT: All right. We'll take the defendant's
24 witness next.

25 MR. GILLEN: Your Honor, the defendants call Mike

1 Baksa.

2 THE COURT: All right.

3 THE CLERK: Raise your right hand, please.

4 MICHAEL RICHARD BAKSA,

5 called as a witness on behalf of the Defendants, having been
6 duly sworn or affirmed according to law, testified as
7 follows:

8 THE CLERK: Please be seated. If you can state
9 your name and spell your name for the record.

10 THE WITNESS: Michael Richard Baksa, M-I-C-H-A-E-L
11 R-I-C-H-A-R-D B-A-K-S-A.

12 DIRECT EXAMINATION

13 BY MR. GILLEN:

14 Q Good afternoon, Mr. Baksa.

15 A Good afternoon, Mr. Gillen.

16 Q Would you please state your current employment?

17 A Currently I'm employed as the assistant
18 superintendent in the Dover Area School District.

19 Q All right. I would ask you to give us some idea
20 for your family background. Are you married?

21 A Yes.

22 Q Do you have children?

23 A I have five.

24 Q Give us some sense for your educational background
25 from your college years onward?

1 A I did my undergraduate work at Moravian College and
2 received a BA in education, a teaching certificate in
3 English and communications. I received my master's in
4 educational administration from Lehigh University. And I've
5 completed doctorate work in all my courses at Widener
6 University. Completed my doctorate. I received my
7 superintendent's letter already, but I need to take my
8 comprehensive exams and do my dissertation at this point.

9 Q Would you please give your employment history for
10 us?

11 A I began teaching at Penn Ridge High School,
12 secondary English. I taught there for six years in
13 Perkasie, Pennsylvania. After that I took an assistant
14 principal's position at Proctor Area Intermediate School,
15 grades 5 through 8. I was there for four years. I then
16 took an assistant principal position at Governor Mifflin
17 High School in Shillington, Pennsylvania. I was there for
18 four years. Then five years principal of Conestoga Valley
19 High School in Lancaster County. And then I came to Dover
20 and I'm starting my fourth year or in my fourth year.

21 Q So when did you come to Dover?

22 A 2002-2003.

23 Q And in what capacity did you first come to Dover?

24 A As the assistant superintendent.

25 Q Okay. We know the facts that have brought you to

1 the courtroom to provide your testimony, and I would like to
2 begin unfolding the story from your perspective.

3 MR. GILLEN: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 MR. GILLEN: Thank you.

7 BY MR. GILLEN:

8 Q Mr. Baksa, I've placed before you a few binders
9 with exhibits. I would ask you to open the slimmer one and
10 take a look at Defendant's Exhibit 288. It should be at the
11 beginning of the folder, Mike.

12 A Got it.

13 Q Okay. You'll see that those are notes relating to
14 a meeting held on January 9th, 2002. Were you present at
15 that meeting?

16 A No.

17 Q I would ask you to turn to the next page of
18 Exhibit 288, the page with the Bate stamp number 3969 in the
19 lower right-hand corner. Would you look at that document?

20 A Yes.

21 Q Do you recognize it?

22 A Yes.

23 Q What does it refer to?

24 A That's the agenda for the administrative retreat.

25 Q What's the date for that administrative retreat?

1 A March 26th, 2003.

2 Q Were you at that meeting?

3 A Yes.

4 Q Can you recall anything about that meeting?

5 A Not specifically. But from the topics there, I
6 probably know what was talked about.

7 Q Okay. Well, before we get to the topics of this
8 specific meeting, let me ask you. You say you came to Dover
9 in 2002?

10 A Correct.

11 Q Did you have any discussion with any board member
12 relating to evolutionary theory in the period between your
13 arrival at Dover and this retreat held on March 26th, 2003?

14 A Yes.

15 Q Who did you speak with?

16 A Mr. Bonsell.

17 Q What was the subject of your discussion with
18 Mr. Bonsell?

19 A During this period when I came, I was new to the
20 district and Mr. Bonsell was the chair of the curriculum
21 committee. And he asked to meet with me, to meet me and
22 then also to share some of his interests in some of the
23 curriculum areas.

24 Q Can you remember any specific curriculum areas that
25 he discussed with you?

1 A Early in the fall I remember sitting down with
2 Mr. Bonsell and him talking a great deal about the
3 importance of the founding fathers and that we give that due
4 attention in our curriculum, that that would be important
5 for our students to learn about their beginnings and
6 foundation.

7 Q Do you remember any discussion with Mr. Bonsell
8 about evolution theory?

9 A This was the year the science curriculum was up for
10 review. So our teachers would be looking at textbooks and
11 reviewing their curriculum for revisions for the purchase of
12 new textbooks for the following year. As a part of that
13 process it's typical that the textbooks would be given over
14 to the board curriculum committee for them to review.

15 I do remember at one point giving the current
16 textbook to Mr. Bonsell and him returning that book with a
17 couple pages marked where he had questions or concerns
18 about.

19 Q Do you remember the nature of the concerns that he
20 conveyed to you?

21 A I did look at the books that -- or the pages that
22 he had marked, and just reading the pages I was unable to
23 determine exactly what his concerns are. So I do remember
24 sitting down with him and speaking with him afterwards.

25 And primarily Mr. Bonsell was -- felt that -- was

1 concerned with the presentation of Darwin in the current
2 textbooks. He felt that Darwin was presented not as a
3 theory but as a fact, that it overstated the evidence and
4 really didn't talk about gaps or problems or leave students
5 room to consider that any other theory might be considered.

6 Q Was there mention of other theories with
7 Mr. Bonsell?

8 A I don't remember Mr. Bonsell talking about other
9 theories. I do remember at some period of time him also
10 conveying to me that he had read an article on carbon 14
11 dating which casts doubt on the dating of the earth. And
12 that he had also -- he felt it highly improbable that
13 species could turn into another species.

14 He talked to me about having seen a documentary
15 video on TV that showed -- or was trying to explain and
16 showing a bear turning into a whale. He found that highly
17 improbable that such an evolution could occur.

18 Q Let me ask you, Rich, to direct your attention to
19 Defendant's Exhibit 283.

20 A Okay.

21 Q Do you recognize that document?

22 A Yes.

23 Q What is it?

24 A It's an invitation to a workshop that Dr. Nilsen
25 had given to me.

1 Q There's a handwritten notation at the upper
2 right-hand corner of the first page of Exhibit 283. Is that
3 your writing, Mike?

4 A Yes.

5 Q What was the purpose of that notation?

6 A To ask my secretary to register me for this seminar
7 and to order the book from one of the books that the
8 featured speaker had authored.

9 Q Did you -- well, let's look at it. What was the
10 title of that seminar?

11 A Creationism and the Law.

12 Q And did you attend that seminar?

13 A Yes.

14 Q Can you tell us from the Exhibit 284 who sponsored
15 the seminar?

16 A Messiah College and The Pennsylvania School Board
17 Association.

18 Q If would you, Mike, I would ask you to direct your
19 attention to Defendant's Exhibit 284.

20 A Okay.

21 Q Do you recognize that document?

22 A Yes.

23 Q What is it?

24 A These are my notes from the workshop.

25 Q Can you tell from your notes who presented at the

1 seminar?

2 A Ted Davis facilitated the workshop and spoke a bit.
3 The key speaker, though, was Dr. Edward Larson.

4 Q Did you note the credentials of the persons who
5 presented?

6 A Dr. Larson was a -- had a degree from Harvard Law,
7 I believe. And Ted Davis, I think, had a Ph.D. in history
8 of science.

9 Q Do you remember anything else about the seminar?

10 A I remember it dealt with -- that the lion's share
11 of the seminar dealt with kind of the history of evolution,
12 its teaching and competing theories of evolution and how
13 they kind of historically reviewed and presented throughout
14 the past 50 years or so.

15 Q Was there any discussion of the situation at the
16 time that you attended the seminar with respect to this
17 topic?

18 A Yeah. At the end of the presentation, the
19 discussion focused on what might be appropriate -- or in
20 what manner might public schools handle some of the
21 alternate theories other than Darwin's theory for evolution.

22 Q Did the presenters express an opinion as to the
23 subject of their seminar, Creationism and the Law?

24 A The presenters for the most part presented that
25 they didn't see why -- they thought that including

1 discussion of other theories would make for a rich classroom
2 discussion environment. They couldn't understand why public
3 schools might be resistant to having that open discussion
4 with students and thought it would be okay to simply present
5 that there are other theories out there that are different
6 than Darwin's.

7 Q If you would, Mike, I would ask you to direct your
8 attention to the page of Exhibit 284 with the Bates number
9 4013 in the lower right-hand corner.

10 A Okay.

11 Q Looking at that let me ask you, did you come away
12 from the meeting with any -- I'm sorry, Mike. 284 at the
13 prior page, 4012. There's a to-do up there. Did you come
14 away from the meeting with a to-do?

15 A Yes.

16 Q And what was that?

17 A There was another workshop that was scheduled for
18 history and science teachers and how they might present
19 alternative theories of evolution in the public school
20 classroom.

21 Q And what did you intend to do with respect to that
22 presentation?

23 A Well, I did make -- usually when I have a to-do
24 I'll follow up on that. Normally what I would do is I would
25 present that workshop information to those teachers and

1 offer them a chance to attend something like that.

2 Q Did you do that?

3 A No.

4 Q Do you remember why?

5 A I'm just guessing. But typically when I come back
6 from a conference I'll have conference folders that get
7 filed away. I believe I filed my notes away without going
8 back to look if there was anything I needed to follow up on.

9 Q There's testimony from Dr. Nilsen that there were
10 projects moving large in this 2003 period. Tell us from
11 your perspective what projects were important?

12 A Certainly the high school building project was
13 drawing the lion's share of attention in the district
14 involving Dr. Nilsen and I. Also, I was involved in working
15 with the high school and school board members in looking at
16 bringing \$110,000 tech ed. program that would be new to the
17 high school. So we were visiting schools and doing research
18 and getting budget figures, estimates for implementing that
19 program.

20 In addition to that, we were looking at re-doing --
21 we had a transitional one, which was essentially a repeat of
22 first grade. We were looking at making that a developmental
23 one which would use the existing first grade curriculum with
24 support. So I had to work closely with teachers to gather
25 data for us to really support instruction of why we would do

1 that move.

2 The science curriculum was up for review along with
3 the family consumer science. And coupled with the science
4 are technology standards. So even though on the curriculum
5 technology was separated out, I did have to go address the
6 technology K-12 to line it up with the science curriculum.

7 Q Mike, I would ask you to look back at Exhibit 288
8 at the page Bate stamped 3969. That's the agenda for the
9 March 6th, 2003 meeting.

10 A Okay.

11 Q I would just ask you to look down the items for
12 discussion there.

13 A In 2002?

14 Q In 2003.

15 A 288?

16 Q 288 at 3969.

17 A Okay.

18 Q There's a number of items there. And I would just
19 like to get whatever you can give us as general information
20 for what was going on at this time.

21 A Under Roman numeral five?

22 Q Yes.

23 A Okay. One of my items was PSSA. So I don't
24 remember specifically, but I would typically update the
25 board on student achievement and where we were with our PSSA

1 scores.

2 Mrs. Grove was implementing a pilot ELM program,
3 which is a support for students in second grade. So she
4 would be reporting on student achievement there.

5 Mr. Wiestling was in charge of public relations for the
6 first time. So he would be reporting his activities.

7 Mr. Walker was piloting an extended kindergarten. CTC,
8 Mr. Riedel. I don't know what that is. Drug testing. I
9 know Mr. Riedel had a committee working with the board. So
10 they were looking at schools that required mandatory drug
11 testing in some areas.

12 Mr. O'Donnell was chair of the Dollars for
13 Scholars. I think he was a chair or a member. So he would
14 be reporting on their activities. Don't remember a lot
15 about the handbooks. Stadium lights, I remember the three
16 year maintenance and stadium lights. I remember there was a
17 lot of talk about getting Army engineers and how to pay for
18 that because he didn't have all the monies for that. We had
19 some.

20 Mrs. Russell was a chair or member of the safety
21 committee. She would be reporting on them. K-6 elementary
22 coordination, I don't remember anything on that. LS
23 schedule, I don't remember that. Policy review. I was on
24 that committee. So was Mrs. Grove.

25 We were kind of looking at rebuilding all of our

1 policies in a very short period of time. So there were a
2 lot of policies that were always under review.

3 Curriculum cycle update. At this point I don't
4 have the year down here, but I'm guessing at some point we
5 made a financial decision not to purchase some science
6 books, family consumer science books. So it took and made
7 our seven year curriculum cycle an eight year curriculum
8 cycle. So I would have probably been giving that update.

9 Mrs. Hoppe chaired the K to 4 science committee.
10 Mr. Hufnagel, 5 to 8. They would be giving reports for
11 that. I don't remember anything about food service, special
12 ed. Voyager for Dr. Butterfield, that was a grant program
13 that would be piloted in kindergarten. She would have
14 reported on that progress. Construction, we were always
15 having reports on where we are. Technology, I don't
16 remember. Transportation, I don't remember.

17 Q Well, the next item on that agenda is board
18 feedback and items of interest. There's been some testimony
19 about that portion of the meeting, but I would like you to
20 tell us what you recall about that portion of the meeting in
21 2003.

22 A Can I look at the --

23 Q Sure. Well, let me ask you before you look at
24 that. As you sit here today, do you remember anything
25 specific about the board feedback and the items of interest

1 portion of the meeting? Do you remember about how long it
2 was and how it occurred?

3 A I think without -- what I'm not sure of now is
4 having looked at the board concerns and seeing -- you know,
5 I think I recall that I remembered from this meeting
6 Mr. Bonsell talking about a 50/50 split in evolution. But
7 now having looked at it, I'm not sure if that triggered my
8 memory. But I'm pretty sure I remembered that before
9 looking at the report.

10 Q What I'm getting at, Mike, is something a little
11 different. I want you to describe the way in which the
12 feedback was solicited and provided.

13 A Okay.

14 Q How did it happen? What portion of the meeting?
15 How long was it? Things like that. Tell us what you
16 recall.

17 A Typically what Dr. Nilsen would do is just ask
18 boards for any concerns or issues or questions they have and
19 then they would speak, you know, a minute or so. And he
20 would -- we won't respond to those. He would just take them
21 down or they were dealt with somebody's particular area. He
22 would take those down and just went right around the room
23 until we got to all of the board members.

24 Q About how long did each board member have to convey
25 their items of interest?

1 A Well, nobody was cutting a board member off. But
2 typically it would only be a few minutes.

3 Q All right. With that in mind, Rich, turn to the
4 next page of 288, the one with Bate stamp 3970 at the bottom
5 right-hand corner. I would just like you to look at that
6 and give us a sense for what you recall about these items
7 that was discussed at the meeting. Look at Mr. Wenrich's
8 concerns.

9 A I do remember Mr. Wenrich talking about discipline.
10 I know that was also Mrs.-- one of Mrs. Brown's concerns
11 about double standards. So I remember him talking about
12 consistency. Checklist review cycle, I don't remember.
13 Alignment. He was on part of the committee that I was
14 working on the high school to visit schools. So I'm
15 thinking technology in the curriculum has to do with that,
16 because we were coordinating the curriculum 7 through 12. I
17 don't know what four is.

18 Q How about Mrs. Callahan; do you recall anything
19 that she said specifically at this meeting regarding those
20 topics?

21 A I don't remember one. Don't remember -- don't
22 remember two.

23 Q How about Mr. Brown, those two items listed under
24 his name. Do you remember anything specific that Mr. Brown
25 said at this meeting about those concerns?

1 A I don't remember one or two, no.

2 Q Let's skip down first to Mrs. Brown, item E. Do
3 you recall anything she said at this meeting specifically?

4 A Yeah. Again, that's the same issue that
5 Mr. Wenrich was pointing out. Because I remember her
6 talking about that.

7 Q Let's look back up at Mr. Bonsell's concern there.
8 There's a number of listed items. Do you remember anything
9 that Mr. Bonsell said about the first item?

10 A I don't remember that.

11 Q How about the second item?

12 A I don't remember that.

13 Q How about the third item, which is creationism?

14 A Don't remember that.

15 Q How about the fourth item, which is emphasizing
16 American history?

17 A I know he talked about that a lot, but I'm not sure
18 I remember him talking about it at this meeting. You know,
19 nothing pops out that --

20 Q How about the remainder of the items listed under
21 his name?

22 A Don't remember five, six, or seven.

23 Q Now, I believe you said you had some discussion
24 with Mr. Bonsell around this time about evolutionary theory.
25 Is that correct?

1 A Yes.

2 Q What -- tell us what you recall about that
3 discussion.

4 A Just what I had stated before, that Mr. Bonsell had
5 concerns about students being presented with Darwin's theory
6 of evolution, and the way it appeared in the text he
7 interpreted that as leaving no room for any other theories
8 to have a chance to be examined side by side. And then he
9 also expressed concern that if that's the way it's in our
10 book and if our teachers are teaching it that way that
11 students might have a conflict with evolution as it may be
12 taught or understood in the home. He was concerned about
13 that, what conflict there might be with that.

14 Q Well, do you recall Mr. Bonsell using the term
15 creationism at the March 26th, 2003 retreat?

16 A No.

17 Q Do you recall Mr. Bonsell using the term
18 creationism in the discussion that you've just recounted?

19 A No. Not when I talked to him.

20 Q What was he talking about, so far as you can make
21 it out?

22 A Well, I mean, that's one of the things that I was
23 never able to get a clear handle on from -- in this whole
24 process through any board members. We -- I kept getting
25 information about dissatisfaction with maybe the

1 presentation in the text and the concerns about maybe how
2 teachers are presenting it. But what was never clear is
3 that if something else is going to be presented, what is
4 that thing going to be.

5 Q Well, let me ask you. Did you do -- let's look at
6 some of these board concerns. For example, Casey Brown, she
7 was talking about block scheduling. Did you do anything as
8 a result of this March 26th, 2003 retreat that related to
9 Casey Brown's raising the block schedule?

10 A Yes.

11 Q What did you do?

12 A Casey, on a number of occasions, had talked to me
13 and Dr. Nilsen about her dissatisfaction with block
14 scheduling at the high school. She brought it up again
15 here. And I remember afterwards going over to the high
16 school and talking to the assistant principal, Larry
17 Redding, and saying hey, I just want you to know, kind of
18 like a heads-up, that Casey is still talking about her
19 dislike for block scheduling.

20 Q And did anything ever come of Casey Brown's
21 objection to block scheduling?

22 A No. I remember down the road, in talking to me,
23 she would throw a comment in here and there, but she never
24 pressed any real formal action to have it evaluated or have
25 it dismantled and something else put in its place.

1 Q In your experience is it unusual for a board member
2 to raise an issue like block scheduling and then nothing
3 concrete to result at the end of the day?

4 A No.

5 Q Did you do anything with respect to the discussion
6 you had with Mr. Bonsell about evolutionary theory in this
7 period?

8 A Yeah. I would have met with Mrs. Spahr and told
9 her of Mr. Bonsell's concerns of the material in the
10 textbook. I'm sure I would have told her about his -- his
11 questioning of carbon 14 dating and his questioning species
12 to species changes. So I'm sure I would have given her that
13 information sometime during that year.

14 Q Do you recall using the term creationism when you
15 spoke with Mrs. Spahr?

16 A No.

17 Q Do you have a belief as to why she says you used
18 the term creationism?

19 A Well, the only thing I could -- I remember
20 Mrs. Spahr in my conversations talking with her that I think
21 the immediate assumption was that we -- that we -- the
22 intent was creationism. While creationism wasn't -- I don't
23 remember that being said to me, but I think if you -- if you
24 look at some of Mr. Bonsell's concerns, particularly with
25 carbon 14 dating and the age of the earth, you know, I don't

1 think it's -- I think that's one of the tenants that might
2 have led her to believe that that's, in fact, what he was
3 talking about.

4 Q But did you use that term when you spoke to her?

5 A No.

6 Q Did there come a time when you had reason to
7 believe that Dr. Peterman had become aware of your
8 discussion with Bert Spahr?

9 A Yeah.

10 Q And with that in mind, I would ask you to look at
11 Defendant's Exhibit 1.

12 A Did you want to ask me about pathways?

13 Q No, I'm not going to go through all that. It's
14 just -- I can see the judge is tired. I can see my fellow
15 counsels are tired. And we're not going to belabor at this
16 point.

17 THE COURT: I'm as chipper as can be.

18 BY MR. GILLEN:

19 Q What I would like to ask you is this. You said you
20 talked to Bert Spahr and not Dr. Peterman. Was there a
21 reason you did that?

22 A Yes.

23 Q Tell us about that.

24 A Dr. Peterman had a knack of overreacting to
25 sensitive situations. In other words, if something -- if

1 something comes up on the horizon and you want to start just
2 being prepared for it, she would in many cases overreact to
3 that situation when the actual situation didn't call for
4 that level of action or that level of concern.

5 Q Will you give us an example of that?

6 A There's a couple I can give you. I do remember
7 very early on when Dr. Peterman joined Dover, one of the
8 things that Dr. Nilsen and I were working with the board on
9 was securing air conditioning for the high school. It was a
10 very sensitive subject. The board was discussing the pros
11 and cons, the merits, and we were working with them to get
12 them as much information as possible.

13 And very early on in Dr. Peterman's time with us, I
14 remember at one of the board meetings she got up and really
15 berated the board for them even considering other options
16 and for them not acting immediately on the air conditioning.

17 Eventually bids were sent out and the high school
18 did get air conditioning, but it made Dr. Nilsen's and my
19 job a lot harder in trying to work with the board when
20 somebody publicly is embarrassing them that way.

21 Q Are there any examples of Dr. Peterman blowing
22 things out of proportion that touch on policy making it
23 difficult?

24 A There was. Dr. Nilsen holds administrative team
25 meetings, which all of the supervisors and principals and

1 administrators attend. When I came to Dover there was a
2 promotion and retention policy that did not allow for the
3 grading of effort and homework, and the policy was being
4 followed for 3 to 6 but not 7 through 12.

5 When I found that out, the next year I made
6 arrangements to fully implement the existing policy. And
7 the way it was implemented caused real upset on the part of
8 the teachers 7 through 12.

9 So here's a policy that we have to follow the
10 policy. So what I did is I did some research on how that
11 policy came to be, how it was changed and went back a number
12 of years to get the different versions. So I put together a
13 history of this policy for us to be able to try to work with
14 the staff to come to some understanding.

15 I gave those documents out at the A team meetings
16 with explicit instructions not to share these, these are
17 confidential, these are for only us to make sense of the
18 stories so that we can figure out how we can move forward
19 with the staff there. Dr. Peterman turned around the next
20 day and shared those documents with her department chairs.

21 Again, now they had information that I had to now
22 defend something else and try to explain to them. It just
23 showed really poor judgment on her part.

24 Q Is that why you went to Bert Spahr rather than Dr.
25 Peterman?

1 A Yes.

2 Q And is that experience part of what shaped your
3 reception of Defendant's Exhibit 1?

4 A Yes. I think I heard that right.

5 Q What did you think about this memo when you saw it?

6 A Again, I thought Dr. Peterman totally overreacted
7 to what was a two minute conversation with Bert in her
8 classroom. Jut that a board member mentioned something
9 50/50, we might have to do something down the road here, I
10 just want you to know that's still being talked about, Bert.

11 Q How about in terms of the information reflected in
12 the memo concerning what the teachers were doing in the
13 classroom. Did you read this memo?

14 A Yes.

15 Q Did you have any reason to believe that part of the
16 memo was inaccurate?

17 A Where Dr. Peterman writes I advised them to
18 continue?

19 Q Well, I guess there is two portions here. I mean,
20 she gives advice. Read that for the record, Mike.

21 A Dr. Peterman writes, "I advised them to continue to
22 mention that creationism is another alternative theory of
23 evolution."

24 Q How did you react to that statement?

25 A Well, two ways. One, I felt Dr. Peterman was

1 overstepping her bounds here. If there is going to be a
2 curriculum piece that teachers are going to preface a unit
3 of study with, it ought to be I sitting down with the
4 teachers to work that out. I did not direct her to do that.
5 No other administrator directed her to do that. That's her
6 acting entirely on her own directing teachers. It really
7 should be handled in a curriculum committee or something
8 like that.

9 Q Well, when you got this memo, did you have the
10 concern that the teachers were engaged in unlawful activity?

11 A No.

12 Q Why not?

13 A It does mention in here that -- she's saying that
14 they had mentioned that creationism started in the unit. I
15 don't believe that mentioning something is teaching
16 something. I think teaching it would be illegal but not --
17 certainly not mentioning it.

18 Q Well, when you create this distinction between
19 teaching and mentioning it, how do you understand that,
20 Mike?

21 A Well, I think teaching in our profession has a very
22 distinct definition with components. I mean, when we talk
23 about the art of teaching, it involves specific
24 instructional objectives, instructional goals for the
25 students. It involves materials that the teachers would use

1 and that the students would use in using the materials. It
2 involves assessments to measure that, so teachers are able
3 then to give feedback grading those to the students. I
4 think all of that makes the process of teaching.

5 Q All right. We're looking at a memo, Defendant's
6 Exhibit 1 that's dated April 1st, 2003. Let me ask you
7 before we go forward. Up until this point, do you recall
8 any board member mentioning a desire to teach creationism
9 50/50 to you?

10 A I remember Mr. Bonsell saying 50/50. But I don't
11 connect that with creationism. So I remember that piece,
12 but I don't remember specifically creationism and 50/50
13 together anywhere.

14 Q Okay. How about any board member mentioning
15 teaching creationism, period?

16 A No. No.

17 Q Well, with that in mind, I want to ask you to look
18 at Defendant's Exhibit 286.

19 A Okay.

20 Q Do you recognize that document, Mike?

21 A Yes.

22 Q What is it?

23 A This is a document that I found during the summer
24 when I was cleaning up my office.

25 Q And what did you do when you found it?

1 A I turned it over to counsel.

2 Q Okay. And it's -- I can tell you it's right here
3 front and center in this litigation. So I want to ask you
4 some questions about it. What is it?

5 A This would be a copy from the biology curriculum
6 guide on the unit that deals with evolution.

7 Q And did you create this document?

8 A I don't remember creating this document, but I
9 believe I did. I'm the only one who has access to this
10 curriculum. So if changes were to be made, I would be the
11 one doing that.

12 Q Did the way in which you found the document give
13 you some sense for the time period in which it was created?

14 A The document itself wasn't dated, but papers on
15 either side place it, you know, in August 2003.

16 Q Well, you know, there's a -- if you look at the
17 unit content concepts column of this document and look down
18 to the bottom entry, you'll see there's a reference to
19 creationism. Do you know how that got there?

20 A No. But I'm -- I believe I probably put that in
21 there.

22 Q I think that's a good guess. Do you have an idea
23 for why you may have put this in a document generated around
24 August of 2003?

25 A Well, not -- that's hard to answer. Not

1 remembering creating the document, it's hard to say why. I
2 mean, I do know that from Dr. Peterman's memo, she
3 referenced teachers mentioning creationism. And I do know
4 from the Messiah workshop they talk about that it might
5 be -- add to a rich discussion in the classroom. And
6 certainly Mr. Bonsell was looking for alternative theories
7 to be mentioned alongside Darwin's evolution.

8 Q Well, did Mr. Bonsell mention teaching creationism
9 to you?

10 A No.

11 Q Was this document passed out?

12 A No.

13 Q How do you know that?

14 A On the document when I found it there's a note for
15 my secretary to make copies for the meeting with science
16 teachers. When I found the document the note was still on
17 it and all the copies were still attached. So I do not
18 believe I ever shared this document with anybody.

19 Q You've referenced two sources of information that
20 you had at the time regarding creationism and the legality
21 of teaching creationism. Before we go forward, let me just
22 ask you.

23 Apart from the seminar at Messiah College and apart
24 from the information you had in the Peterman memo at this
25 time, did you have any other information bearing on the

1 teaching of -- or the mentioning of creationism?

2 A Other than Dr. Peterman's memo --

3 Q And the Messiah seminar, the seminar held at
4 Messiah College.

5 A I don't remember additional.

6 Q If you look at that draft curriculum change you had
7 worked on, it says students will be able to demonstrate an
8 awareness. Was there a discussion of students being made
9 aware of other theories around this time?

10 A That was -- you know, from my initial conversations
11 with Mr. Bonsell, that was, you know, I think the thrust.
12 The presentation of Darwin and where's the balance; can we
13 present other theories.

14 In looking at this document, I mean, I could -- I
15 could -- I remember my thinking earlier on if we are going
16 to address these concerns, one of the things that had
17 happened earlier on is Dr. Nilsen had requested a copy of
18 the curriculum page, this page, and had given me some
19 language that talked about alternative -- other theories of
20 the origins of life. I remember -- I don't remember getting
21 language that had creationism in it, but I remembered
22 getting language that had other theories of origins of life.

23 So earlier on, I'm thinking we might be able to
24 address Mr. Bonsell's concerns with a mention of something
25 from Dr. Nilsen that looked like maybe a curriculum change

1 would address those concerns. But it was -- you know, there
2 was nothing specifically being brought forward to the table
3 to say, you know, do this, look at this, you know, check
4 this unit out. So it was kind of hard to address it when we
5 didn't know what the target was.

6 Q All right. Well, let me ask you. You didn't --
7 you said you didn't pass this document out. Why?

8 A I had met with Bert -- one of the concerns was how
9 we might be addressing teaching origins of life. I remember
10 I had a meeting with Bert Spahr, and Bert told me the
11 teachers didn't address origins of life. What they taught
12 was they taught the change over time within the species.
13 After I learned that then really this becomes a moot point
14 because you don't need to balance other theories of the
15 origins of life if we're not presenting any.

16 I know I remembered Mr. Bonsell saying that he was
17 in full agreement with what the teachers were doing in the
18 classroom when he learned that they were just teaching
19 change over time within the species.

20 Q Let me ask you about that. Did you do anything as
21 a result of your conversation with Bert Spahr?

22 A Yes, I met with science teachers.

23 Q And can you recall about when that meeting took
24 place?

25 A September, I believe. September.

1 Q And the meeting did occur?

2 A Yes.

3 Q I would ask you, Mike, to look at Defendant's
4 Exhibit 287. Do you recognize that document?

5 A Yes.

6 Q What is it?

7 A Those are my notes for the meeting with the science
8 teachers in September.

9 Q And looking at those notes, can you tell us what
10 you learned during that meeting?

11 A The teachers reported that, as Mrs. Spahr had told
12 me, that they don't teach the origins of life, that they
13 teach the origins of species, in other words, species within
14 species are changing into different species, that we teach
15 change within species, that they --

16 Q Did they have any discussion of origins of life as
17 it relates to change within species? Did they differentiate
18 the two?

19 A Yeah. I believe when they mentioned origins of
20 life, it was life from the very beginning and totally
21 different species becoming different species. But they
22 simply dealt with -- I know Mrs. Miller uses Finch's as an
23 example. But they simply dealt with a single species
24 developing and a change over time and evolution in that
25 single species.

1 Q I would like you to look at Exhibit 287, Mike, and
2 look at the fourth entry down on that page. Can you make
3 that out?

4 A We teach change within species.

5 Q What's beneath that?

6 A We don't teach ape turning into man.

7 Q Let me ask you, Mike. Did you have a discussion
8 with Mr. Bonsell about that subject prior to coming to this
9 meeting?

10 A No.

11 Q Did you raise that issue with the teachers during
12 that meeting?

13 A I don't remember raising it. To me it looks like
14 these are the notes of what the teachers were reporting back
15 to me.

16 Q Is that what you were taking notes on?

17 A Yes.

18 Q Well, what was the result of this meeting from your
19 perspective?

20 A After we confirmed this, then the teachers and I
21 both thought it was a good idea to -- Mr. Bonsell was
22 concerned about teaching origins of life and not doing that,
23 so let's sit down and have the teachers explain exactly what
24 they are doing in the classroom for him to hear firsthand
25 from them.

1 Q Were the teachers amenable to that idea?

2 A Yes.

3 Q Was it their idea?

4 A I think -- from what I remember, it was suggested
5 and I know they were agreeable to it. They wanted to do
6 that. I know Mrs. Spahr was certainly eager to sit down.

7 Q Did that meeting take place?

8 A Yes.

9 Q Tell us what you can recall about that meeting.

10 A The science teachers were there along with
11 Mr. Bonsell and myself. And it was -- I think I remember
12 Mrs. Miller speaking, Mr. Linker speaking and pretty much
13 they just explained here is what we teach. Here is what we
14 say before we start teaching the unit. Here is what we
15 don't teach. Mr. Bonsell had a couple of questions for
16 them.

17 The meeting didn't last real long. At the end of
18 it Mr. Bonsell was satisfied and all of his concerns were
19 kind of allayed from that meeting. The teachers had
20 answered all of his questions.

21 Q Do you remember anything that Mr. Linker said at
22 that meeting?

23 A I remember Mr. Linker talking about when he
24 introduces the unit that he -- on the board he puts
25 creationism in a line on the chart.

1 MR. ROTHSCHILD: Objection, Your Honor. He's
2 testifying to hearsay.

3 MR. GILLEN: I guess I will clarify the question
4 for the witness.

5 THE COURT: All right. We'll sustain the
6 objection. Strike the answer. You can move on or ask it a
7 different way.

8 MR. GILLEN: Sure. Thank you, Your Honor.

9 BY MR. GILLEN:

10 Q Did you gain an understanding concerning whether
11 the information contained in the Peterman memo was accurate
12 based on Mr. Linker's comments?

13 A My understanding is that some of the teachers
14 mentioned creationism before.

15 MR. ROTHSCHILD: Objection, Your Honor. We're
16 getting right back into the hearsay.

17 MR. GILLEN: No, he's not.

18 MR. ROTHSCHILD: His understanding is going to be
19 based solely on hearsay.

20 MR. GILLEN: That's different between hearsay. The
21 way you have ruled throughout, Judge, he can testify to his
22 understanding of the teachers' practice.

23 THE COURT: That's not what he said, though. He
24 said -- he used the word mentioned. That does implicate
25 hearsay. So the objection is sustained on that basis. It's

1 his understanding, as you know, that's permissible. But if
2 the answer involved what someone said, that's objectionable.
3 So the objection is sustained. The answer is stricken. Try
4 it another way.

5 MR. GILLEN: Okay.

6 BY MR. GILLEN:

7 Q Did you have an understanding concerning whether
8 teachers mentioned creationism in the biology classroom as a
9 result of this meeting?

10 MR. ROTHSCHILD: Your Honor, I really think even
11 with this change in the question this way, it's just a way
12 of getting in hearsay as to what the teachers communicated.
13 Mrs. Miller was here. Mr. Linker has been subpoenaed. And
14 it seems to me that this evidence has to come in through
15 them. I think even just putting the words understanding,
16 he's still going to just bring it in for the truth of how
17 they taught --

18 MR. GILLEN: No.

19 MR. ROTHSCHILD: -- the class.

20 THE COURT: Give me an evidentiary reason that it's
21 objectionable.

22 MR. ROTHSCHILD: Hearsay.

23 THE COURT: No. Give me one more. Give me one
24 more.

25 MR. ROTHSCHILD: Relevance would be another. His

1 understanding --

2 THE COURT: No. I think his understanding is
3 relevant. He was at the meeting. I think his understanding
4 is relevant. Your point is that their testimony is more
5 reliable than his. That's for me to weigh and to determine.
6 He was at the meeting. His impression is relevant.

7 MR. ROTHSCHILD: I think what they are trying to
8 prove with bringing this in is the way the science teachers
9 actually taught the class. They are doing it for more than
10 just his understanding. Now, so it is for the truth of the
11 matter asserted. That's the evidentiary weight that they
12 want to give to this.

13 THE COURT: And that would be a fair objection if
14 what Mr. Gillen was attempting to elicit -- and we are going
15 at this in fits and starts -- but if he elicits hearsay,
16 that's certainly a good objection and it does go to the
17 truth. But for Mr. Baksa's impression to be stated,
18 relevancy would be a plausible objection. But I think in
19 the context of his testimony and at this meeting as a fact
20 witness, I'll take his impression. I understand your point
21 it goes to weight, but I think it's relevant.

22 MR. ROTHSCHILD: I want my objection on the record
23 that it not now or later be construed as for the truth of
24 how Mr. Linker and Mrs. Miller was teaching biology.

25 THE COURT: Their testimony is certainly better

1 evidence of that.

2 MR. ROTHSCHILD: What I'm trying to raise, it's the
3 only evidence of that. This is the only evidence of his
4 impression.

5 THE COURT: That's a fair argument. But now we're
6 getting into argument and we're not arguing the objection.
7 So I'll overrule the objection. You can state your
8 impression.

9 Do you remember the question, sir? If not, we can
10 read it back. Or restate it. Why don't you restate the
11 question?

12 MR. GILLEN: Yes, Your Honor.

13 BY MR. GILLEN:

14 Q Did you get an understanding concerning whether the
15 teachers were presenting creationism as a result of this
16 meeting?

17 A As a result of this meeting, I got the impression
18 that some teachers were presenting creationism.

19 Q Let me ask you about the tone of the meeting. Was
20 the meeting civil?

21 A Very.

22 Q When the parties departed, were they on good terms?

23 A Yes.

24 Q Did Alan Bonsell -- did you ever get a sense for
25 Alan Bonsell's impression of the meeting, whether it was

1 constructive?

2 A After the meeting I did stop in the parking lot and
3 talk with Mr. Bonsell.

4 Q And did you have a sense that he was pleased with
5 the outcome?

6 A Yes, very.

7 Q Did Alan Bonsell ever ask you to take any action
8 with respect to the biology curriculum in 2003?

9 A No.

10 Q Did Alan Bonsell ever ask you to take any action
11 with respect to the biology text in 2003?

12 A Yes.

13 Q What was that?

14 A The text for biology and chemistry and some family
15 consumer science tests were postponed for a year.

16 Q Okay. Apart from that, did he ever ask you to take
17 any specific step relating specifically to the biology text?

18 A No.

19 Q Okay. You've referenced some overall direction he
20 gave you with respect to texts. Was that text purchased?

21 A The following year, yes.

22 Q Well, tell us what you mean. Describe what you're
23 referencing.

24 A The texts for science and family consumer science,
25 those texts were used for one additional year. So they were

1 not purchased for the 2003-2004 school year, but then they
2 were purchased for the 2004 and 2005 school year.

3 Q Let me ask you. Let's just look at that issue of
4 text purchase, Mike. In your capacity as assistant
5 superintendent, did you have a sense for a series of
6 consistent concerns that the board brought to each text
7 purchase?

8 A Typically the board looked at a couple of things.
9 One they would always inquire and I would always present
10 the -- ask the teachers to send over a copy of the old text
11 and the new that they are looking at. The board was
12 interested in the copyright of the existing text and the new
13 text and the implementation year to see how many years we
14 had used the text.

15 They also looked at the condition of the text to
16 see if it warranted being replaced. And if the condition
17 looked fairly good and the teacher's still advocating
18 different texts and they then they ask for justification of
19 content and that it's substantially different from the old
20 text to warrant the purchase.

21 Q Do you recall whether there was some concern that
22 texts weren't being used?

23 A Yes.

24 Q Tell us what you remember about that one.

25 A I remember Mrs. Harkins said on a number of

1 occasions that she didn't think -- she kept saying that the
2 teachers weren't using the science texts, so why are you
3 even thinking about buying new ones for them.

4 Q Do you recall a concern that students didn't have
5 texts?

6 A Yes.

7 Q Biology texts?

8 A Yes.

9 Q Who voiced that concern?

10 A I had heard on that -- I remember at least on one
11 or two occasions Mrs. Callahan bringing that concern up that
12 students don't have science texts.

13 Q Was it accurate to say that they didn't have
14 science texts?

15 A No.

16 Q Let me be more specific. Was it accurate to say
17 they didn't have biology texts?

18 A No.

19 Q Did you check on that?

20 A Yes.

21 Q Did you gain an understanding concerning whether
22 students had a biology text at this time?

23 A Yes.

24 Q And was it a text assigned to them or used in some
25 other way?

1 A What happened is in the year I came, 2002-2003, we
2 had moved our biology curriculum from 10th grade to 9th
3 grade to align the standards. So that year we had to teach
4 biology in two grades and didn't have enough textbooks to go
5 around. So that year the teachers used the textbooks and
6 students had them, but each student wasn't individually
7 issued a textbook.

8 Q So were they using classroom sets?

9 A Yes.

10 Q I would like you to look at Defendant's Exhibit 2.
11 Do you recognize that document?

12 A Yes.

13 Q What is it?

14 A This is a budget sheet from the high school that is
15 budgeting for 220 biology textbooks and assorted materials.

16 Q This document is dated January 5th, 2004?

17 A Yes.

18 Q At this time was there a concern expressed that the
19 science department wouldn't get its texts because the
20 purchase had been delayed in 2003?

21 A Mrs. Spahr was concerned about that. She was
22 worried, since it was delayed once.

23 Q Did you receive Defendant's Exhibit 2?

24 A I would have seen this. Dr. Nilsen and I review
25 all of the building principal's budgets page by page. So I

1 would have seen this page, and I possibly could have had
2 this page forwarded to me in preparation for meeting with
3 the board curriculum committee to talk about the purchase of
4 new textbooks.

5 Q I would ask you to look at Defendant's Exhibit 3
6 and further direct your attention to Roman numeral four,
7 that item.

8 A Okay.

9 Q And ask you to look that over.

10 A Okay.

11 Q Do you recognize this document, Mike?

12 A Yes.

13 Q What is it?

14 A These are minutes that I created after meeting with
15 the curriculum advisory council on April 15th, 2004.

16 Q We have had some testimony about what that council
17 is. Let me ask you, what does item four reflect?

18 A I remember Mrs. Wideman bringing up a concern that
19 we had not purchased the remainder science and family
20 science consumer books, and I believe Dr. Peterman also
21 addressed that concern. They felt that what needed to
22 happen is the teachers needed to get together with the board
23 curriculum committee so we could make sure that we get
24 textbooks this year.

25 Q Did you speak to their concern for getting

1 textbooks this year?

2 A Yes.

3 Q And what did you say?

4 A Well, two things. One, that I would follow through
5 and get the teachers and the board curriculum committee
6 together and that Dr. Nilsen had already made sure that we
7 had monies that were escrowed from last year so that we
8 wouldn't have any budget shortfall to purchase the books.

9 Q Was there a board curriculum committee meeting as
10 indicated by this item?

11 A Yes.

12 Q Was there more than one?

13 A Yeah, there were a few.

14 Q Tell us about it. When did the first one occur?

15 A I believe in May.

16 Q Do you remember anything about that meeting?

17 A At that meeting the science teachers would be
18 there, the family consumer science teachers, I believe Dr.
19 Peterman, myself, the board curriculum committee. I
20 remember asking teachers to be prepared to justify -- I
21 think I did this beforehand. I think they had already given
22 me justifications for the purchases. I prepared that as a
23 handout and I gave that out at the meeting. So the meeting
24 really was for the board, if they had any questions of the
25 teachers why they were advocating these purchases, they

1 could get answers at that time.

2 Q Do you remember any specific comments made at that
3 May meeting about a text?

4 A The science teacher spoke. The family consumer
5 science teacher spoke. The only thing I really remember is
6 I remember Mrs. Harkins pointing out that one of the family
7 consumer science books, it had the same picture as the old
8 text. She questioned whether there were substantial changes
9 in them enough to warrant purchase of a new book.

10 Q Mike, I would ask you to take a look at Defendant's
11 Exhibit 164.

12 A Okay.

13 Q Do you recognize that document?

14 A Yes.

15 Q What is it?

16 A It's an E-mail from Mrs. Spahr.

17 Q I would ask you to just look it over, Mike.

18 A Okay.

19 Q Does that document reflect the concerns that the
20 science faculty was expressing to the -- to you at this time
21 about purchase of their texts?

22 A Yes.

23 Q There's a reference in there to a justification.
24 What kind of justification were -- were you looking for a
25 justification?

1 A No.

2 Q Was -- who was?

3 A The board curriculum committee.

4 Q What kind of justification were they interested in?

5 A Again, they were interested in the age of the
6 books, how many years they've been in use, their condition,
7 and if there is substantially different content in the old
8 and new editions.

9 Q Looking at -- you talked about some concerns
10 expressed during the 2003 period about text usage and so on.
11 Was there a concern that texts were not being used that
12 carried into the 2004 period?

13 A In biology?

14 Q Yeah.

15 A Could you ask that again?

16 Q Sure. Well, we know -- you've said Barrie Callahan
17 was saying that students don't have a book. Do you remember
18 that issue coming up in 2004?

19 A Yes.

20 Q Do you remember Sheila Harkins saying teachers
21 aren't using the book? Do you remember that concern being
22 expressed in 2004?

23 A Yes.

24 Q I would ask you to look at Defendant's Exhibit 8.
25 Before we move on, let me ask you this. Was Bert Spahr in

1 charge of interacting with you as assistant superintendent
2 on these budgetary issues?

3 A Yes.

4 Q How would you describe Bert's attitude towards that
5 process?

6 A Well, Bert liked to do things once. And you know,
7 she was frustrated with not getting everything and having to
8 reproduce some of those materials. But it was very hard to
9 console Bert. Even though I assured her money was escrowed,
10 that, you know, we're going through a very normal process of
11 reviewing the books, Bert was still a little panicky that
12 all of this might not happen.

13 Q Did you come to believe that she was concerned that
14 she would have to wait a whole other cycle to get her book?

15 A Yeah, she's saying eight years. That would be -- I
16 mean, the textbooks would be some 16, 17 years out. So I
17 mean, that couldn't possibly happen.

18 Q And did it happen?

19 A No.

20 Q I would ask you to look at Defendant's Exhibit 7
21 and 9.

22 A Okay.

23 Q Look first at 9, Mike.

24 A Okay.

25 Q Do you recognize that document?

1 A Yes.

2 Q What is it?

3 A This -- when I asked for justification, this is
4 what the science department sent over to me.

5 Q Is Exhibit 9 related to Defendant's Exhibit 7?

6 A Yes, it's -- I put it together and incorporated it
7 into this -- into 7 as a board handout at the board
8 curriculum committee.

9 Q All right. I would ask you to look at Defendant's
10 Exhibit 8.

11 A Okay.

12 Q Do you recognize that document?

13 A Yes.

14 Q What is it?

15 A That's the amount that was in the current budget
16 for textbook purchases and the textbooks that were remaining
17 that we needed to purchase that year.

18 Q Why was that document generated?

19 A To show to everybody involved, including the board
20 curriculum committee, that there were funds available.

21 Q If you would, Mike, look at Defendant's Exhibit 10.

22 A Okay.

23 Q Do you recognize that document?

24 A Yes.

25 Q What is it?

1 A It's a five year average of actual textbook
2 expenditures for the district.

3 Q And why was that document created?

4 A Mr. Bonsell was interested in learning typically,
5 you know, what did we spend on textbooks a year.

6 Q Was it generated for his information?

7 A And the rest of the board curriculum committee.

8 Q We've been focusing increasingly on biology texts
9 here. So I would like to ask you, can you recall -- we're
10 in the May period. Before we go on, I want to ask you, do
11 you recall considerations being raised about the family
12 consumer science text?

13 A Concerns?

14 Q Yes.

15 A Yes.

16 Q And what were they?

17 A Again, Mrs. Harkins felt that the text was not
18 sufficiently different to warrant the purchase of a whole
19 new series.

20 Q All right. If we turn our attention to the
21 purchase of the biology texts, and realize that we're in the
22 April/May period, can you recall what happened next relating
23 to the purchase of the biology texts?

24 A After the meeting in May for biology I think the
25 next thing I remember is getting a list of concerns from

1 Mr. Buckingham about the proposed biology textbook.

2 Q And with that in mind, I would ask you to look at
3 Defendant's Exhibit 15. Do you have that?

4 A Yes.

5 Q Do you recognize that document, Mike?

6 A Yes.

7 Q What is it?

8 A This is the list of concerns that I got from
9 Mr. Buckingham.

10 Q When you got this document, did you understand the
11 nature of Mr. Buckingham's concerns?

12 A No. I -- when I got the document I did go to each
13 of these pages in the sections he referenced and read that,
14 but I was unable -- from doing that I was unable to
15 determine the specific nature of his concern.

16 Q Did you do anything as a result?

17 A Yes.

18 Q What did you do?

19 A I asked Mr. Buckingham to meet with me to be
20 more -- help me fully understand his concerns and needs on
21 these pages.

22 Q Did that meeting occur?

23 A Yes.

24 Q I would ask you to look at Defendant's Exhibit 4.
25 Do you recognize that document, Mike?

1 A Yes.

2 Q What is it?

3 A That's my notes from my meeting with
4 Mr. Buckingham.

5 Q Was anyone else present at this meeting?

6 A No.

7 Q Did the meeting take place, as indicated, on
8 June 4th, 2004?

9 A Yes.

10 Q Give us a sense looking at this document as to the
11 nature of Mr. Buckingham's concerns.

12 A The first one, Mr. Buckingham was concerned that
13 there was lots of mention of Darwin throughout the book.

14 MR. ROTHSCHILD: Objection, Your Honor. Hearsay.

15 MR. GILLEN: He's testifying to what's reflected in
16 his notes, which he created as assistant superintendent in
17 the course of his duties.

18 THE COURT: I don't think that cures the hearsay
19 objection. Tell me why it cures the hearsay objection.

20 MR. GILLEN: Because what he's conveying is based
21 on his notes, not on what Mr. Buckingham said.

22 MR. ROTHSCHILD: That's then using the notes to
23 bring in hearsay. I mean --

24 MR. GILLEN: The note is a business record.

25 MR. ROTHSCHILD: It's for the truth of what

1 Mr. Buckingham --

2 MR. GILLEN: The note is a business record. That's
3 a document that's admissible as such. He's taking it down.
4 In his capacity as assistant superintendent he's taking
5 notes to collect input from a board member.

6 THE COURT: Is the note a business record? What do
7 you say about that?

8 MR. ROTHSCHILD: I don't think it's necessarily a
9 business record. There hasn't been foundation laid. Let me
10 just be a little more specific about my concern. He's
11 talking about Mr. Buckingham's concerns. It's not just
12 simply the statements made, but he's characterizing what
13 Mr. Buckingham's concerns are. So it's a -- you know, it's
14 clearly hearsay. I don't think he's laid any foundation
15 that this is a business record. We certainly don't have a
16 record that this was regularly done. We haven't seen the
17 notes from all of the different types of meetings
18 Mr. Buckingham participated in. We've seen some.

19 THE COURT: If, in fact, it's a business record,
20 and I don't know that it is, you haven't laid a foundation
21 to make it a business record. That would have to do with
22 the admissibility of the exhibit itself. I don't think that
23 that would allow you, even if the exhibit itself were
24 admissible, to go beyond the four corners of the exhibit.
25 And I think that's the objection, an objection, a part of

1 the objection.

2 You can't in my opinion use the note, business
3 record or not, as a pretext to elicit hearsay testimony
4 which is outside the four corners of the note. And it
5 sounds like that's what you're attempting to do.

6 MR. GILLEN: And if that's --

7 THE COURT: It does indeed go to the truth.

8 MR. GILLEN: I would say this, Your Honor. You're
9 correct. And let me lay a foundation, that he took this in
10 connection with his duties as assistant superintendent.

11 THE COURT: Again, even if you do, even if it's
12 conceivably admissible on the business record grounds, and I
13 don't know that it is, he can't go outside the four corners
14 of what's in the note. It's not a springboard to elicit
15 other testimony outside of the note which would be hearsay.

16 MR. GILLEN: No. He -- well, I guess, Your Honor,
17 unless I'm mistaken, he can -- I'll lay a foundation that he
18 took this in the course of his duties. Then he can testify
19 to what he recalls based on the notes he took. Correct?

20 THE COURT: Not if it's hearsay. Not if it's
21 hearsay.

22 MR. GILLEN: Well, if it's what -- if he purports
23 to testify as to what Mr. Buckingham said, I agree, that
24 would be hearsay. If he purports to testify to what he
25 learned as a result of the exchange and note it, that's his

1 personal knowledge.

2 THE COURT: Well, we're back to the old impression
3 versus hearsay statements. And we all understand what the
4 distinction is, I think. But again, to be clear, if you
5 were going to utilize this to refresh his recollection and
6 get him to state his impressions, if those impressions do
7 not implicate hearsay statements, that may be fair. The
8 admissibility is another issue. I don't know if you want to
9 lay the foundation and attempt to admit the note under -- or
10 on that basis. Do you want to say something?

11 MR. ROTHSCHILD: Yeah. I think there's another
12 fine distinction here, which is if Mr. Buckingham said
13 something, and we can call it a verbal act that Mr. Baksa
14 reacts to that I think may result in some hearsay, but I
15 think the way the question was asked it was really for the
16 truth of what Mr. Buckingham's concerns are.

17 THE COURT: I agree with that. The objection is
18 sustained on that basis. Now, be guided by what I said and
19 you can -- you can proceed accordingly. Or do you need
20 clarification?

21 MR. GILLEN: I am having some difficulty
22 understanding the precise nature of Mr. Rothschild's
23 concerns.

24 THE COURT: The question itself as originally
25 objected to was, in my view, quite evidently designed to

1 elicit a statement and that statement would be what
2 Mr. Buckingham said, and it would go to the truth. That's
3 hearsay. The objection was sustained on that basis.

4 You then got into a discussion about the
5 admissibility of the note based on your contention that it's
6 possibly a business record. Mr. Rothschild's further
7 objection is that you did not lay a foundation to take this
8 as a business record. That's correct. Now, I don't know if
9 you want to do that.

10 But in any case, you can't go outside the four
11 corners of the note. The fact that he took this note or
12 took these notes does not provide -- I'll say this again and
13 for the last time, it does not provide a springboard for you
14 to elicit statements, extrajudicial statements, by
15 Mr. Buckingham which go to the truth.

16 MR. GILLEN: And certainly I agree with that, Your
17 Honor. And I -- it's not my intention to do that. I'm
18 trying to get at what Mr. Baksa believed he learned as a
19 result of this exchange and noted and took with him to go
20 forward. To the extent that it's demonstrating his
21 understanding, his belief and what he's trying to do as
22 assistant superintendent, that's his own knowledge.

23 THE COURT: Without repeating what Mr. Buckingham
24 said.

25 MR. GILLEN: Right.

1 THE COURT: Let's proceed.

2 MR. GILLEN: All right.

3 BY MR. GILLEN:

4 Q Mike, just to be clear and to move this along, you
5 can testify to your understanding but you cannot testify,
6 and the judge will tell you if you try it, to exactly what
7 Mr. Buckingham said.

8 A Okay.

9 Q So with that in mind, let me ask you about this
10 document. This is a set of notes.

11 THE COURT: I didn't make the rules of evidence,
12 but we must live by them.

13 MR. GILLEN: As the judge said yesterday, we could
14 be here all day.

15 THE COURT: We're working on it.

16 BY MR. GILLEN:

17 Q Mike, let's talk about how you created this set of
18 notes. Did you call the meeting with Mr. Buckingham in your
19 capacity as assistant superintendent for the purpose of
20 learning his concerns relating to the biology texts?

21 A Yes.

22 Q Did you create this set of notes in your capacity
23 as superintendent in an effort to facilitate the purchase of
24 the biology text?

25 A Yes.

1 Q Did you create this document in the ordinary course
2 of your duties as the superintendent of Dover Area School
3 District?

4 A Yes.

5 Q Is it your practice to keep notes of this kind in
6 meeting with board members on issues relating to district
7 business?

8 A Yes.

9 Q Thank you. Then looking at this note and being
10 careful not to try to sort of repeat what Mr. Buckingham
11 said, let me ask you, does this document reflect your
12 understanding as to the nature of Mr. Buckingham's concerns?

13 A Yes.

14 Q If you would, look at item number two. Does that
15 reflect your understanding of the nature of Mr. Buckingham's
16 concerns relating to the biology text?

17 A Yes.

18 Q Explain, if you will, exactly what your
19 understanding was.

20 A Well, I don't remember what he said but --

21 Q And you couldn't say it if you did.

22 THE COURT: After all that. Why didn't you tell us
23 that before?

24 BY MR. GILLEN:

25 Q Tell us what you understood.

1 A What I understand is number two, that his concern
2 would be that the theory is treated like a fact, a reality
3 and that it's mentioned so many times in the book that that
4 by itself kind of biases students to accept it as a fact.

5 Q And let me just ask you, generally speaking, does
6 this document reflect the nature of your -- the concerns as
7 you understood them of Mr. Buckingham?

8 A Yes.

9 Q Well, did there come a time when Mr. Buckingham
10 gave you additional materials to consider in connection with
11 the biology curriculum, or did there come a time when you
12 received materials that you understood came from
13 Mr. Buckingham?

14 A Yes.

15 Q What were those materials?

16 A I received two DVDs and a book. I'm not sure that
17 I received them all at once.

18 Q You mentioned two DVDs. Do you remember which
19 ones?

20 A I remember *Icons of Evolution* was a DVD and also a
21 book, and then I remember there was another DVD.

22 Q Did you say that the title of the book was the same
23 as the DVD?

24 A Yes.

25 Q What was that title?

1 A *Icons of Evolution.*

2 MR. GILLEN: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 MR. GILLEN: Thank you.

6 BY MR. GILLEN:

7 Q Mike, I have handed you two DVD's. Do you
8 recognize those?

9 A Yes.

10 Q Are those the materials Dr. Nilsen passed on to
11 you?

12 A Yes.

13 Q There was also a book, and I just want to confirm
14 again, was it -- what was the title of the book you
15 received?

16 A *Icons of Evolution.*

17 Q Given that Mr. Bonsell has -- I mean Mr. Buckingham
18 has expressed concerns, what happened next as a result? Did
19 you do anything?

20 A Yes.

21 Q What did you do?

22 A I took the notes that I had from my meeting with
23 Mr. Buckingham and made a copy of those, and then I met with
24 Mrs. Miller and went over those with her.

25 Q Let's look at Exhibit 19 and 20. Looking first at

1 Exhibit 20, Mike, do you recall that document?

2 A Exhibit 20?

3 Q Yeah. Do you recognize it?

4 A Yes.

5 Q What is it?

6 A Those are my notes from the board curriculum
7 committee meeting with the science teachers on June 24th,
8 '04.

9 Q Again, let me ask you, did you take this -- these
10 notes in connection with your duties as assistant
11 superintendent of Dover Area School District?

12 A Yes.

13 Q And did you take it as a result of the meeting that
14 was had on this date?

15 A Yes.

16 Q Did you take it for the purpose of performing your
17 duties as assistant superintendent?

18 A Yes.

19 Q Do you regularly take notes of meetings with staff
20 or board members relating to district business?

21 A Yes.

22 Q Does this document, Exhibit 20, reflect, at least
23 in part, your understanding of the outcome of the meeting
24 that was held on this day?

25 A Yes.

1 Q And I would ask you to look at Exhibit 19.

2 A Okay.

3 Q Do you recognize that document?

4 A Yes.

5 Q Now, what is it?

6 A These -- on this document I do have more notes from
7 that meeting. But at the top of the document is survey
8 results from biology books used in some Parochial schools.

9 Q Did you create this document in your capacity as
10 assistant superintendent?

11 A Yes.

12 Q To further the duties of assistant superintendent
13 of the district?

14 A Yes.

15 Q Are the handwritten notes on that document your
16 own?

17 A Yes.

18 Q Did you make those notes at your meeting with the
19 science faculty held on June 24th, 2004?

20 A Yes.

21 Q Did you make those notes in your capacity as
22 assistant superintendent?

23 A Yes.

24 Q Did you make those notes for the purpose of
25 performing your duties as assistant superintendent relating

1 to curriculum?

2 A Yes.

3 Q Do you ordinarily take notes of this nature when
4 meeting with the faculty or board members for the purpose of
5 board business?

6 A Yes.

7 Q District business?

8 A Yes.

9 Q Okay. Do you recall specifically what occurred at
10 the June 24, 2004 meeting?

11 A Yes.

12 Q Tell me what you can recall.

13 A At the meeting we already had one meeting in May
14 where the science teachers presented the textbooks that they
15 wanted and the rationale for that. Between that we got the
16 list of Mr. Buckingham's concerns. We did meet with
17 Mrs. Miller for us to be able to address it at the next
18 meeting.

19 And then in the meantime the other thing I did is
20 our teachers had already previewed texts that are typically
21 used in public schools. I went out and looked for other
22 organizations to look at other textbooks that might have a
23 different treatment of Darwin that would be more acceptable
24 to the board curriculum committee. So I do have this and --
25 this from Parochial schools and what some of our

1 home-schoolers used.

2 So I brought those documents to the meeting. At
3 the meeting there was an exchange. Our teachers tried to
4 address Mr. Buckingham's concerns at this meeting, did
5 explain to him clearly what they were teaching in class.
6 And Mr. Buckingham was okay with that. But he -- he kept
7 bringing up -- Mr. Buckingham was concerned that teachers
8 taught origins of life in the past even though they're
9 saying that they're not doing it now.

10 There was a mural that showed the descent of man
11 which would speak to the origins of life as far as he was
12 concerned. And so as a consensus in this meeting because
13 we're -- the teachers are asking for the Miller-Levine book.
14 Mr. Buckingham is expressing concerns. So as a result of
15 this meeting, there were some assurances put in place for
16 Mr. Buckingham to give his approval for us to move forward
17 and purchase the book.

18 That was that Mrs. Brown, as the chair of the
19 policy committee, would revise two policies. One was a gift
20 policy to assure that any gift that comes into the classroom
21 matches the curriculum and supports it. Another was the
22 curriculum policy to make sure that our curriculum always
23 aligns with our standards.

24 Q You referenced some discussion of the mural. Did
25 you have an impression concerning the nature of the

1 significance of the mural to Mr. Buckingham?

2 A I believe the mural showed the descent of man, of
3 ape to man. And Mr. Buckingham, I would describe him as
4 objecting to that. I can only believe that he did not
5 believe in that type of evolution.

6 Q Did he tell you anything about -- relate the
7 mural -- or did you have an impression that he related the
8 mural to the teachers' assertion they didn't teach origins
9 of life?

10 A I think Mr. Buckingham felt that by having that
11 mural displaying that image and that species to species
12 evolution displayed in the science classroom that, in fact,
13 that was advocating that school of thought.

14 Q Well, did he -- I mean, Bert Spahr has been here in
15 court. What did Bert Spahr say in response to that?

16 A I think she said like if you mention that mural one
17 more time I'll something or other, and we stopped talking
18 about the mural at that point actually.

19 Q Let me ask you. You've got a note here that says
20 not teach origins of life. Did you have an understanding at
21 the meeting concerning whether teachers did that?

22 MR. ROTHSCHILD: Can we just clarify which
23 document?

24 MR. GILLEN: Oh, sure. Defendant's Exhibit 20.

25 MR. ROTHSCHILD: Thank you.

1 THE WITNESS: I think that's the note that's a
2 concern of Mr. Buckingham's that we not do that.

3 BY MR. GILLEN:

4 Q Let me ask you to look at Defendant's Exhibit 20.

5 A Okay.

6 Q I would ask you to -- can you remember the specific
7 things that were said at this meeting, Mike?

8 A I can remember in general kind of what the results
9 were that we all intended to do when we left the meeting.

10 Q Okay. Well, tell me about that.

11 A Again, that the teachers assured Mr. Buckingham
12 they are teaching that origin of species has changed in time
13 with the species. Mr. Buckingham said that he was fine with
14 that but he wanted assurances that they weren't teaching the
15 origins of life.

16 Mr. Buckingham brought up an incident that referred
17 to -- it was my understanding that he thought that we did do
18 that and had reports that we did do that from our teachers.

19 Q How about, there's a reference to Icons -- I'm
20 sorry, Mike. Go ahead.

21 A So the --

22 Q There's a reference to *Icons of Evolution*. Did
23 that come up during the meeting?

24 A Yes.

25 Q Did you direct teachers to do anything with that

1 video?

2 A The teachers, I believe at this point, already had
3 looked at it. And they agreed to review it again. And if
4 there were any pieces that did match up and align to their
5 curriculum, they would consider using the video.

6 Q If you look down further beneath that note there's
7 an entry teachers will review tape. Did you take that note
8 as a result of your discussions at the meeting?

9 A Yes.

10 Q Beneath that there's a notation intelligent design
11 instead of creationism. Tell us what you can recall about
12 that notation.

13 MR. ROTHSCHILD: Are we back now on Exhibit 19?

14 MR. GILLEN: Yes. Exhibit 19, page 55.

15 BY MR. GILLEN:

16 Q Tell us what you can recall about that item,
17 intelligent design instead of creationism.

18 A At the -- I believe one of the things we talked
19 about, the curriculum -- that was written in the curriculum.
20 I think one of the things we talked about and I might have
21 suggested this that instead of us talking about intelligent
22 design or creationism that we -- that we talk about
23 intelligent design and not creationism. I mean, one of the
24 things that I understood is way back in October I had in my
25 pocket an opinion from the solicitor on the teaching of

1 creationism.

2 MR. ROTHSCHILD: Objection, Your Honor.

3 MR. GILLEN: Yeah. Don't -- you can't --

4 THE COURT: The objection is sustained. The answer
5 is stricken. You may proceed.

6 BY MR. GILLEN:

7 Q Mike, for the purposes of this examination, do not
8 reference any of that matter that you've discussed with your
9 solicitor. Just the one document that was provided but
10 that's it.

11 You are speaking to this note you made, intelligent
12 design instead of creationism. And I would ask you to
13 explain what you can recall at this meeting about that.

14 A Well, I thought one of the other agreements we had
15 that we would include some language in the curriculum and it
16 wouldn't be creationism. It would be intelligent design
17 instead.

18 Then on 20 at the very bottom I started drafting
19 language that might be included in the curriculum guide. It
20 was my understanding that -- I mean, I thought I read this
21 language back, and we were in agreement at that meeting that
22 that would be okay to include.

23 Q And when you say we were in agreement, who were you
24 referring to?

25 A The teachers and Mr. Buckingham and the rest of the

1 board curriculum committee.

2 Q Did you come away from this meeting with any sense
3 for whether you had managed to bring together Mr. Buckingham
4 and the science faculty in some sort of consensus?

5 A I thought when we were done with this meeting with
6 what we had understood that Mrs. Brown was going to do with
7 the policies, with what the teachers were going to do with
8 reviewing the video, and I was going to do with the
9 curriculum language that Mr. Buckingham would be satisfied,
10 we would move forward and purchase the Miller-Levine
11 textbook.

12 Q And did you have a sense for whether Mr. Buckingham
13 was on board with the purchase of the text?

14 A Yes.

15 Q And I would ask you to look at Defendant's Exhibit
16 21. Do you recognize that document?

17 A Yes.

18 Q What is it?

19 A This would be a memo from my secretary to Dr.
20 Nilsen's secretary to place on the board agenda the purchase
21 of the Miller-Levine textbook in July.

22 Q And did you believe that was consistent with what
23 Mr. Buckingham had agreed to at this meeting?

24 A Yes.

25 Q Let me ask you to look at Defendant's Exhibit 5.

1 Do you recognize that document, Mike?

2 A Yes.

3 Q Was there any discussion of this document at the
4 June 24th meeting?

5 A No. This was handed out but not discussed.

6 Q And did you believe this text was a viable
7 candidate as a possible text for Dover Area School District?

8 A No.

9 Q And was that based on your review of the document?

10 A My review of the description of the text, yes.

11 Q There was some -- has been some reference to
12 information you collected about books used by other schools.
13 Tell me how that came about.

14 A In -- after receiving objections from
15 Mr. Buckingham and sharing those with teachers, then we
16 looked at -- we were going to show the board curriculum
17 committee and Mr. Buckingham all of the texts that we had
18 looked at. I thought of other places and public schools
19 where we might be able to get some additional books that
20 maybe we hadn't typically looked at.

21 So I had one of the secretaries in the office
22 survey Parochial schools and also had my secretary look at
23 what Bob Jones was using.

24 Q When you looked for texts, did you understand the
25 teachers had already reviewed some texts?

1 A Yes, they had.

2 Q Why did you select the areas of inquiry that you
3 looked into?

4 A Well, pretty much what our teachers, and the main
5 stream publishers that they would get pilot books from or
6 samples from, pretty much what they receive are what all of
7 the local public schools are using.

8 Q Focusing on the text purchased, we have just looked
9 at a memo to Barb Holtzapple. Who is she?

10 A Dr. Nilsen's secretary.

11 Q She was instructed to put it on the agenda?

12 A Correct.

13 Q I would ask you to look at Defendant's Exhibit 22.

14 A I don't have that one.

15 Q It's not in the folder?

16 THE COURT: It may be out of order. In my book --

17 THE WITNESS: I got it. I'm sorry. Okay.

18 BY MR. GILLEN:

19 Q And I would ask you to direct your attention to the
20 page with the Bate stamp number 101 in the lower right-hand
21 corner.

22 A Okay.

23 Q The item under Roman 13, curriculum.

24 A Okay.

25 Q What do you see reflected there?

1 A There's -- the first two items are the approval of
2 the Miller-Levine textbook and the second item is the
3 purchase of the books.

4 Q And what is the copyright of the text reflected for
5 purchase there?

6 A 2002.

7 Q Now, you were instructed that Barb place this on
8 the agenda. Did you have a belief whether Mr. Buckingham
9 was prepared to approve purchase of the text for this board
10 meeting?

11 A Yes.

12 Q What was that?

13 A That he would approve it.

14 Q I would ask you to turn to Defendant's Exhibit 23
15 and look at the page with the Bate stamp number 110 in the
16 lower right-hand corner.

17 A Okay.

18 Q And further direct your attention to the item six,
19 curriculum.

20 A Okay.

21 Q And do you see approved the text reflected there?

22 A No.

23 Q And do you know why?

24 A Yes.

25 Q Why is that?

1 A Just before the -- this July meeting Mrs. Spahr
2 called me and said that she had just discovered that Rob
3 Eshbach had received the 2004 biology text and she just
4 opened it by accident and asked that we postpone the
5 approval of these books so that they could take a look at
6 that book, because they thought pretty much they would
7 probably want the 2004 edition instead.

8 Q Who made that request?

9 A Mrs. Spahr.

10 MR. GILLEN: Judge, I suggest it's a good time and
11 high time to adjourn for the day. Are you amenable to that?

12 THE COURT: Any objection from the plaintiffs?

13 MR. ROTHSCHILD: Not at all, Your Honor.

14 THE COURT: We'll call it a week and we'll
15 reconvene and continue with direct examination of this
16 witness at 9 a.m. on Monday. And of course we'll have a
17 full trial day on Monday. And I wish you all a pleasant
18 weekend. We'll see you Monday.

19 THE CLERK: All rise.

20 MR. GILLEN: Your Honor, if I may, one housekeeping
21 matter. We have an expert coming in from Great Britain
22 which we would like to begin with on Monday, if that's okay.

23 THE COURT: Any objection?

24 MR. ROTHSCHILD: No objection.

25 THE COURT: So we'll suspend Mr. Baksa's testimony

1 and we'll pick it up after the expert.

2 MR. GILLEN: Thanks, Judge.

3 THE COURT: All right. We'll start with that on
4 Monday. Thank you.

5 (The proceedings were adjourned at 4:34 p.m.)

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I, Lori A. Fausnaught, RMR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

s/Lori A. Fausnaught, RMR

Lori A. Fausnaught, RMR
Official Court Reporter

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