

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

<u>FOR THE DEFENDANTS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Alan Bonsell				
By Mr. Gillen			3	
By Mr. Harvey				13
Sheila Harkins				
By Mr. Gillen	24		126	
By Mr. Schmidt		85		132

1 THE COURT: All right. Good morning to all.
2 We are on redirect examination by Mr. Gillen.

3 MR. GILLEN: Thank you, Judge.

4 (Whereupon, ALAN BONSELL, having been
5 previously duly sworn, resumed the witness
6 stand.)

7 **REDIRECT EXAMINATION**

8 BY MR. GILLEN:

9 Q. Good morning, Alan.

10 A. Good morning.

11 Q. We are back on the record in connection with your
12 testimony rendered on Monday. And this is my
13 opportunity to ask you a few questions to address some
14 questions that had been asked of you and for which
15 answers are required.

16 The first question I'd like to ask is about
17 things you've been interested in while you've been a
18 school board member. And in particular, Mr. Harvey
19 asked you some questions about an interest in
20 creationism, which plainly you have, and we've
21 discussed.

22 I want to ask you this. As you sit here today,
23 we know now from documents, that you mentioned that word
24 at two board retreats; one in 2002, one in 2003. Do you
25 recall anything that you said at those meetings about

1 creationism?

2 A. No.

3 Q. Okay. Well, let me ask you this. There's a
4 couple other things you've been interested in, and I
5 want to talk about those before we go forward. At the
6 2002 retreat, you also mentioned prayer. As we sit here
7 today, do you remember anything that you said at that
8 board retreat about prayer?

9 A. No.

10 Q. Have you ever taken any step as a board member to
11 implement prayer in the schools while you have been on
12 the Dover Area School District School Board?

13 A. No.

14 Q. Let me ask you about something else that you've
15 expressed an interest in, and that's the social studies
16 curriculum. As we sit here today, do you recall
17 anything that you said at the 2002 or 2003 board retreat
18 about the social studies curriculum?

19 A. Not that I recall.

20 Q. Since you've been a board member on the school
21 board at Dover Area School District School Board, have
22 you ever taken any step to require a change to the
23 social studies curriculum?

24 A. No.

25 Q. Since you've been a board member of the Dover

1 Area School District School Board, have you ever taken
2 any step to implement the teaching of creationism?

3 A. No.

4 Q. Mr. Harvey has asked you a few questions about
5 religious implications of theories, and I want to make
6 sure that the record is straight on that point. With
7 that in mind, I'd like you to look at an exhibit he
8 showed you.

9 MR. GILLEN: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MR. GILLEN:

12 Q. I've shown you what has been marked as
13 Plaintiffs' Exhibit 127. Do you recognize that, Alan?

14 A. Yes.

15 Q. What is it?

16 A. It's the Dover Area School District newsletter
17 that went out in February.

18 Q. Okay. There's a few portions of this newsletter
19 that have been focused upon, and I want to ask you a few
20 questions about that. If you look at the section,
21 quotables, you'll see there a quotation that is
22 attributed to someone named Anthony Flew. I want to ask
23 you. Do you know why that quotation is there?

24 A. Yes.

25 Q. Explain that.

1 A. Well, Anthony flew is, what he quoted here, he
2 was regarded as an atheist, and just trying to show that
3 you didn't have to be religious or a Christian to
4 believe in intelligent design.

5 Q. So let's talk about religious implications of
6 theories with that in mind. As you sit here today, do
7 you believe that intelligent design is necessarily
8 religious?

9 A. No.

10 Q. As you sit here today, do you believe that
11 evolutionary theory is necessarily religious?

12 A. No.

13 Q. Do you believe that evolutionary theory is
14 necessarily atheistic?

15 A. No.

16 Q. Explain that. Why?

17 A. Well, you have Charles Darwin, who was a theistic
18 evolutionist who, I believe, in one of his books wrote
19 about God and the creator. And I believe that
20 Plaintiffs, I think, Mr. Miller, said he was a Catholic
21 and believed in evolution.

22 Q. There's another portion of the newsletter that
23 I'd like to ask you about. You'll see in the same page
24 you're looking at, there's a question, are there
25 religious implications to the theory of ID? I want to

1 ask you, do you know why that section of the newsletter
2 is there?

3 A. Yes.

4 Q. Explain.

5 A. Well, basically, there was a lot of people at
6 that time going around saying that ID was religious --

7 MR. HARVEY: Objection, Your Honor.
8 Hearsay.

9 MR. GILLEN: Thank you. Your Honor, I can
10 ask him why he did it, and I'll do so.

11 THE COURT: I think it's a close call. I'll
12 overrule the objection so long as he doesn't repeat the
13 exact substance of what the individual said. I'll take
14 it in the context of the answer, so the objection is
15 overruled. You may proceed.

16 MR. GILLEN: Thank you, Your Honor.

17 BY MR. GILLEN:

18 Q. Please continue, Alan. Why is that section
19 there?

20 A. It was my understanding that -- it was my
21 understanding, basically, that it was being said that ID
22 was religious in the fact that the designer was God.
23 And we would just -- we were just trying to show that
24 you could have religious implications in every theory,
25 but it doesn't mean it has to be religious, just you can

1 make religious implications.

2 Q. And when you say, theory, what kind of theory are
3 you referring to?

4 A. Well, scientific theories.

5 Q. Okay. And was it ever your understanding, while
6 you were a member of the school board, that whatever
7 religious implications could be attached to a theory
8 made it more or less scientific?

9 A. No.

10 Q. How do you view that? What's your understanding
11 of the relationship between scientific theory and
12 religion?

13 A. Well, from my understanding is, there's -- you
14 can bring religious implications into every scientific
15 theory, but that doesn't mean that it is religious.
16 It's still scientific. And that's the way I view those,
17 evolution and ID, as scientific.

18 Q. When you voted for the curriculum change on
19 October 18, 2004, were you doing so because of religious
20 implications attached to theories?

21 A. No.

22 Q. Why were you voting?

23 A. All I was trying to do is to make the education
24 better for the kids.

25 Q. As we sit here today, do you have an

1 understanding concerning whether intelligent design
2 theory is consistent with your religious faith?

3 A. Not necessarily, no.

4 Q. What do you mean by that?

5 A. Well, Dr. Behe -- as my understanding of what Dr.
6 Behe has said is that, he has no problems with 4 billion
7 year old Earth or billions of year old Earth and the
8 evolutionary process.

9 Q. Are some of the views that you -- well, do you
10 understand those views to be views attached to
11 intelligent design theory?

12 A. Yes.

13 Q. Okay. Knowing that, do you still believe that
14 the board curriculum policy is a good measure to be in
15 place in Dover Area schools?

16 A. Yes.

17 Q. Okay. Now one final area I want to ask you a few
18 questions about are the circumstances surrounding the
19 donation of the books. Questions have been asked about
20 that, and I want to make sure that the record is clear.
21 First of all, whose idea was it to donate those books?

22 A. My father volunteered.

23 Q. Before your dad volunteered, had you ever spoken
24 with Bill Buckingham about arranging a donation of the
25 books?

1 A. No.

2 Q. At the time your dad volunteered to donate those
3 books, had he donated other things?

4 A. Yes.

5 MR. HARVEY: Objection, Your Honor. Leading
6 the witness.

7 MR. GILLEN: I can ask -- I don't really
8 know how I can ask that. Were there other donations
9 that your father made before this, I suppose.

10 THE COURT: Why don't you rephrase. I think
11 you're getting to where you need to be, so I'll sustain
12 the objection. It was somewhat leading. I think that
13 was likely an appropriate question, so why don't you ask
14 it that way.

15 MR. GILLEN: I will, Your Honor. Thank you.

16 BY MR. GILLEN:

17 Q. Alan, at the time that your dad volunteered to
18 donate the Of Pandas books, had there been other
19 occasions in which he had donated books?

20 A. In which he had donated?

21 Q. Had donated anything to the school? I'm sorry.

22 A. Yes.

23 Q. How about yourself? Prior to this time, had you
24 engaged in any donations?

25 A. Yes.

1 Q. Okay. And what had you donated?

2 A. Books.

3 Q. Now we know that later Mr. Buckingham passed the
4 check on to you, correct?

5 A. Yes.

6 Q. Okay. At any time did you know how Mr.
7 Buckingham had collected the funds that he passed on to
8 you?

9 A. No.

10 Q. How about where the funds had come from? At any
11 time, do you know where he had collected the funds from?

12 A. No.

13 Q. Do you believe that the funds Mr. Buckingham
14 passed on to you covered the cost of the books that were
15 donated?

16 A. No.

17 MR. HARVEY: Objection, Your Honor.
18 Continuing leading the witness in this area.

19 THE COURT: No, I don't think that's leading
20 under the circumstances. I'll overrule the objection.

21 BY MR. GILLEN:

22 Q. Would you answer the question?

23 A. Could you repeat that?

24 Q. Yeah. Do you believe that the donation, the
25 funds that were passed on to you from -- by Mr.

1 Buckingham covered the full cost of the books?

2 A. No.

3 Q. And why is that?

4 A. I believe it was in July or August, there was a
5 paper that had said that the Pandas books were
6 approximately \$25.00 apiece, and I believe there was 60
7 books donated, so that was almost \$1500.00.

8 Q. All right. There's one last question. Both the
9 Plaintiffs and the judge have asked you some questions
10 about an answer you gave in your deposition, and I know
11 that it troubled you, and I want to ask you a few
12 questions about that.

13 First of all, I want you to describe the
14 situation, as you saw it, when you were deposed in
15 January of 2005.

16 A. Leading up to this, we, after passing this
17 curriculum change, we didn't think that we were going to
18 be sued. And in the middle of December, we were sued.
19 I was very shocked by that. It came the holidays, two
20 days after the holidays, that I was deposed. I've never
21 been deposed before let alone being in a federal
22 lawsuit. I was extremely nervous, to say the least.
23 And I honestly tried to do my best and answer as
24 truthfully as I could.

25 MR. GILLEN: I have no further questions,

1 Your Honor.

2 THE COURT: All right. Thank you, Mr.
3 Gillen. Recross by Mr. Harvey.

4 MR. HARVEY: Yes, Your Honor, just one
5 second.

6 THE COURT: All right.

7 **RECROSS EXAMINATION**

8 BY MR. HARVEY:

9 Q. Mr. Bonsell, since you gave testimony here on
10 Monday, have you spoken to anyone about your testimony
11 or about this case?

12 A. My attorney.

13 Q. You spoke to him about your testimony?

14 A. I'm sorry?

15 Q. Did you speak to him about your testimony?

16 A. Yes.

17 MR. GILLEN: Objection, Your Honor. I'm not
18 sure that's a proper question.

19 THE COURT: Well, it's a yes or no. I think
20 there may be an objection to the question. That's a
21 yes, no question. That's not objectionable.

22 MR. GILLEN: Okay.

23 THE COURT: The answer was, yes, I think.

24 THE WITNESS: Yes.

25 THE COURT: And you may proceed.

1 BY MR. HARVEY:

2 Q. When you were deposed on April 13th, April 13th,
3 2005, that's your second deposition, you were asked if
4 you had had a chance to read your first deposition,
5 isn't that correct?

6 A. (No response.)

7 MR. HARVEY: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. HARVEY:

10 Q. Turn to page 4 in your deposition, please, Mr.
11 Bonsell, line 12. Mr. Rothschild asked you this
12 question. Have you read the transcript of your previous
13 deposition in this case? Answer, I have read over, I
14 believe, most of it. Question, You don't think you've
15 read all of it? Answer, it was right after it came out.
16 I haven't seen it for a couple months. Question, So
17 sitting here today, is there anything that you testified
18 to in that prior deposition that you would like to
19 change or modify today? Answer, I don't believe so.
20 Isn't that correct, Mr. Bonsell?

21 A. That's what it says, yes.

22 Q. And --

23 MR. GILLEN: Your Honor, I object. Unless
24 they asked him about it, there's no basis to impeach him
25 on based on that. Did they ask him about it?

1 THE COURT: Ask him about?

2 MR. GILLEN: About the check or anything
3 that they're questioning him about now.

4 THE COURT: Mr. Harvey.

5 MR. HARVEY: I certainly asked him about it
6 on January 3rd, and in his deposition, we asked him if
7 there was anything in there he'd like to change or
8 correct, and he said, no.

9 THE COURT: This was the second deposition.

10 MR. GILLEN: That's correct.

11 THE COURT: Is your point, Mr. Gillen, that
12 they didn't ask him about the check during the second
13 deposition?

14 MR. GILLEN: Exactly, Your Honor. I have no
15 recollection, as I sit here today, and I don't see how
16 it could be impeached based on a question that wasn't
17 asked.

18 THE COURT: Well, but the question that was
19 asked by Mr. Harvey went to the previous deposition, if
20 I understand it.

21 MR. GILLEN: But -- it's true, but he hadn't
22 seen it for a couple months, and it's a general
23 question.

24 THE COURT: I think that goes to weight.
25 The question was asked, you've seen the transcript of

1 your previous deposition, is there anything that you
2 want to change? They can ask him that.

3 MR. GILLEN: They can indeed, and I agree
4 with that. But he said, I only read most of it a couple
5 months ago.

6 THE COURT: Well, again, you're not making
7 an evidentiary objection. You're arguing the point.
8 You're saying --

9 MR. GILLEN: Well, I just -- I don't see how
10 they can impeach him based on a question they didn't
11 ask. He was asked questions in his first deposition,
12 and I understand that. But it's a general question, is
13 there anything you can recall at this time that you
14 would change. I mean, it's not even a fair question.

15 THE COURT: No, it's more than that. It's a
16 question asked during a second deposition as to whether
17 he wants to change anything he said in his first
18 deposition. And the answer was, no. And it's been
19 asked and answered. I mean, we have it on the record.
20 It's not a general question. It's a specific question.

21 Now you may say that, and you may have an
22 argument that, he didn't have enough time, that he
23 wasn't able to look at it, that there were other
24 circumstances. But that goes to weight. That doesn't
25 go to the admissibility of the question, and this isn't

1 impeachment necessarily. This is cross examination.

2 MR. GILLEN: Okay. I accept your decision,
3 Judge.

4 THE COURT: Well, I'll let you argue more if
5 you got another argument you want to make.

6 MR. GILLEN: Well, it seems to me, Mr.
7 Harvey is trying to impeach him based on the fact that
8 he didn't volunteer it at the second deposition.

9 THE COURT: I don't think that's
10 impeachment. I think you may call it impeachment. It's
11 a question that is legitimate on recross, because you
12 raised it on redirect, that has to do with the answer
13 that he gave. He gave testimony now on redirect that
14 during his first deposition he was nervous, he had never
15 been involved in a federal lawsuit, he had difficulties.

16 Now Mr. Harvey is saying to him, you were
17 redeposed in April, and did you make a correction with
18 respect to your first deposition? I think that's a fair
19 question. It flows from your redirect.

20 MR. GILLEN: Okay.

21 THE COURT: All right. The objection is
22 overruled. Lost in the shuffle, was there an unanswered
23 question? I'm not sure.

24 MR. HARVEY: I think he answered.

25 THE COURT: I thought he did. So it won't

1 be stricken. The objection is overruled. You may
2 proceed.

3 BY MR. HARVEY:

4 Q. Mr. Bonsell, at your first deposition, when Mr.
5 Rothschild asked you who donated the books, your first
6 response was not, my father, or my father had anything
7 to do with it. Your first response was, I don't know,
8 isn't that correct?

9 A. It could have been.

10 Q. Please turn to page 13 in your deposition on
11 January 3rd, line 6. Isn't it true that Mr. Rothschild
12 asked you the following questions, and you gave the
13 following answers. Question, Are you aware that 60
14 copies of this book were donated to the school district?
15 Yes. Question, Who donated those books to the school
16 district? Answer, I don't know. That was your
17 testimony at that time?

18 A. That's what it says on that answer, yes.

19 Q. And then later after --

20 A. But I --

21 Q. Then Mr. Rothschild asked you several more
22 questions?

23 THE COURT: Let him finish his answer.

24 THE WITNESS: I later on went on to correct
25 that to the person that, and then I named my father.

1 BY MR. HARVEY:

2 Q. That was after Mr. Rothschild asked you several
3 follow-up questions, correct?

4 A. I believe so, yes.

5 MR. HARVEY: No further questions, Your
6 Honor.

7 THE COURT: All right. That concludes the
8 examination of this witness. Sir, you may step down.
9 And we'll take your next witness, Mr. Gillen.

10 MR. GILLEN: Thank you, Your Honor.

11 MR. GILLEN: The defense calls Sheila
12 Harkins.

13 THE COURT: While Ms. Harkins is taking the
14 stand, we can take up the exhibits for Mr. Bonsell. We
15 have on the Defendant's examination, we have the D-44,
16 which is the memo and plan and instruction curriculum
17 guide; D-46, which is the memo regarding the 10/7/04
18 meeting; D-50, the minutes of 10/7/04; D-187 is the memo
19 and curriculum guide; D-184 is the history of the
20 teachers edits of the biology statement; and D-119 is
21 the press release by the Discovery Institute.

22 First of all, did I miss any exhibits? And
23 Mr. Gillen, I may have gone through them too rapidly.
24 But did you get those?

25 MR. GILLEN: I did get those. I believe

1 they're all proper, and I would move for their
2 admission. If you would, Judge, I'd ask you to leave
3 the door open. I didn't bring my list.

4 THE COURT: That's fine. We'll let you pick
5 it up later. Let's get as much as we can, and that will
6 be acceptable, and if during the break you identify
7 others, we can double back and take those.

8 MR. GILLEN: Thank you, Judge.

9 THE COURT: What's the Plaintiffs' position
10 on those exhibits?

11 MR. HARVEY: No objection to any of those
12 exhibits, Your Honor.

13 THE COURT: All right. Then they are all
14 admitted. On the Plaintiffs' side, we have a number of
15 articles that we have not yet ruled on, and we're going
16 to rule on those at some point soon. They constitute
17 P-54, 44, 45, 46, 54, and 797.

18 We then have P-134, which is the Thomas More
19 Law Center web page; P-822, which is the updated
20 website; and P-824, which is the intelligent designer
21 article posted on the website.

22 MR. HARVEY: Your Honor, we're not moving to
23 admit 824, the article from the website. We are moving
24 to admit the website itself.

25 MR. GILLEN: And I object to that, Your

1 Honor. I don't think it has any relevance to the
2 dispute. You know, as I say, my position on that is,
3 our clients are responsible for their words and deeds,
4 the way in which whatever we say has nothing to do with
5 this case. I would never dream of bringing to bear
6 anything --

7 THE COURT: You're making a relevancy
8 argument?

9 MR. GILLEN: Yeah, relevancy, and also I
10 think it wasn't truly -- the way it was used in the
11 questioning, it's not admissible for any purpose. He
12 asked him specific questions about how Mr. Bonsell
13 viewed the representation. Those answers were given.
14 That's the evidence.

15 THE COURT: Mr. Harvey, we didn't --
16 although there was an objection to relevancy, as you
17 went through your questions, which was overruled, and we
18 allowed you to ask the questions, it would appear to me
19 that there could be extraneous matters on the website
20 that would go to their admissibility. I gave you
21 latitude to ask the questions. I would not be inclined
22 to admit the web pages as exhibits. I don't think we
23 need to do that under the circumstances.

24 MR. HARVEY: Your Honor, P-134, I believe,
25 is only one page from the website, and as we established

1 in the testimony, it was dated right around the time he
2 engaged Thomas More, so I would think --

3 THE COURT: And he was asked questions
4 regarding specific portions of that, that you directed
5 him to, and I understand that, and that's on the record.
6 But I don't have instantly a memory of what else is on
7 that page, and I do agree with Mr. Gillen, that it's
8 possible that there -- there it is through the magic of
9 electronics.

10 But I don't -- I'm not inclined to
11 necessarily admit that if there are -- Mr. Gillen, I'm
12 going to ask you that you look at this as well. What
13 specifically on that is objectionable, having asked the
14 questions of the witness.

15 MR. GILLEN: Well, again, Your Honor, I
16 think, you know, it is, of course, hearsay. But on top
17 of that, it's improper to try and -- what shall I say.
18 I don't know what the purpose of it is.

19 THE COURT: Yeah, you know, I have to agree
20 with Mr. Gillen under the circumstances. You know, I
21 think that having given some latitude, having given some
22 latitude on the questions, I'm not inclined to admit
23 that, and I will not admit the website page. I think
24 that's extraneous.

25 MR. HARVEY: So P-134 and P-821 are not

1 admitted?

2 THE COURT: Well, I guess all of the
3 exhibits, the non, if you will, article exhibits, as
4 they pertain to Mr. Bonsell, would be the website pages,
5 and so I will not -- one of them, you withdrew anyway.
6 The other two would be the website and the updated
7 website. They're not admitted.

8 MR. HARVEY: Yes, Your Honor. Then the
9 remaining, there was another one, P-63, which was the
10 minutes from the July the 12th meeting.

11 THE COURT: I'm sorry. I couldn't hear what
12 you said.

13 MR. HARVEY: P-63, I don't believe, has been
14 admitted.

15 THE COURT: Okay. I missed that.

16 MR. HARVEY: That's the minutes from the
17 July the 12th meeting which shows that the minutes from
18 the June board meetings were approved that day.

19 THE COURT: That's P-63?

20 MR. HARVEY: That's correct.

21 THE COURT: We missed that. I apologize.

22 MR. GILLEN: No objection, Your Honor.

23 THE COURT: Then P-63 is admitted. Anything
24 else we've missed?

25 MR. HARVEY: I don't believe so, Your Honor.

1 THE COURT: All right. Then we'll proceed
2 with the examination of this witness.

3 Whereupon,

4 **SHEILA HARKINS**

5 having been duly sworn, testified as follows:

6 COURTROOM DEPUTY: State your name, please,
7 and spell it for the record.

8 THE WITNESS: Sheila Harkins. S-H-E-I-L-A.
9 H-A-R-K-I-N-S.

10 **DIRECT EXAMINATION**

11 BY MR. GILLEN:

12 Q. Good morning, Ms. Harkins.

13 A. Good morning, Pat.

14 Q. As you know, you're here in court today to give
15 testimony in this case, which is basically your side of
16 the story, your perspective on what happened. And as a
17 preliminary matter, I'd like you to just introduce
18 yourself. Are you married?

19 A. Yes, I am married.

20 Q. And do you have children?

21 A. I have a daughter, which I'm very proud of. She
22 went through the Dover school system. After that, she
23 graduated, went to college. And I'll brag, if I can a
24 minute. She then went on to Penn State to get her
25 master's degree with a 4.0 average. And she came back

1 to Dover and has been a teacher in the Dover Area School
2 District for 15 years.

3 Q. And what about your education? Give us some
4 sense for your educational background.

5 A. I have a high school diploma, and I've taken some
6 college courses.

7 Q. And are you currently employed?

8 A. I consider myself a homemaker, but I do buy
9 properties on the side and rehab them and sell them.

10 Q. Are you currently a member of the Dover Area
11 School District School Board?

12 A. I am a member of the Dover Area School Board. I
13 am a member of the York County High School Board. And
14 I'm also a member of the York County Probation
15 Department Dover Youth Aid Panel.

16 Q. When did you first become a school board member?

17 A. I became a school board member eight years ago.

18 Q. And were you elected or appointed?

19 A. I was elected.

20 Q. So you ran for office?

21 A. Yes, I did.

22 Q. And why did you do that?

23 A. I was interested in education. I had volunteered
24 in my daughters's classrooms and in other classrooms,
25 and I have always been interested in kids.

1 Q. Now when you ran the first time, was there any
2 religious dimension to your platform?

3 A. No, none.

4 Q. Did you have a specific issue that brought you
5 out and that you used in campaigning?

6 A. The first time?

7 Q. Yes.

8 A. No, huh-uh.

9 Q. You mentioned the first time. If you were
10 elected, how long is a term for a school board member?

11 A. Four years.

12 Q. And did you run for election for another term?

13 A. Yes, I did.

14 Q. Okay. And how about, let's look at that decision
15 to run. Why did you do that?

16 A. Well, when I first came on the board, I found the
17 board was not as fiscally conservative as I was. And I
18 found myself in the minority with Casey Brown. There
19 then was a building project that came up, and Casey and
20 I was the minority members at that time in the building
21 project.

22 Q. Let me go back for a minute to your first race.
23 When you ran the first time, did you run with anyone?

24 A. No, I did not.

25 Q. When you ran the second time, for your second

1 term, did you run with anyone?

2 A. I ran with Casey Brown, Alan Bonsell, and Angie
3 Yingling.

4 Q. You've mentioned Casey Brown, and there's a few
5 questions I want to ask her -- you about her as we get
6 started. There's been some discussion in this case
7 about discussions of religion with Mrs. Brown, and I
8 want to ask you, did there come a time when you
9 discussed religion with Mrs. Brown?

10 A. Yes, I have.

11 Q. How did that happen?

12 A. Casey knew I attended Quaker meetings, and she
13 was interested in the Quaker faith, and so she asked me
14 what the Quakers believe, and I told her, Quakers didn't
15 have a dogma or a doctrine.

16 Q. Did she bring it up or did you bring it up?

17 A. She asked me what Quakers believe.

18 Q. And then when she asked you the question about
19 the Quaker doctrine, did you explain?

20 A. Well, she then asked me, she said, we talked a
21 little bit, and then she said, well, Quakers, do they
22 believe the Bible is an inherent word of God? I told
23 her that wasn't necessary --

24 MR. SCHMIDT: Your Honor, let me interpose a
25 hearsay objection now. I understand that the subject

1 matter of the conversation can be identified, but I
2 believe it's improper for the witness to testify to what
3 Mrs. Brown just said to her.

4 THE WITNESS: All right. Can I just say, we
5 discussed religion?

6 THE COURT: Ma'am, when there's an
7 objection, you don't talk until I finish talking --
8 those are the rules -- and/or until Mr. Gillen finishes
9 talking. So we'll let Mr. Gillen talk.

10 MR. GILLEN: The objection is proper, and
11 let me rephrase.

12 THE COURT: All right. We'll strike the
13 answer and sustain the objection.

14 BY MR. GILLEN:

15 Q. You've testified that you had a discussion with
16 Mrs. Brown. As a result of that discussion, did you
17 provide her with material responsive to her concerns or
18 questions?

19 A. Yes, I did. I bought her a book on Quaker faith
20 and doctrine and gave it to her.

21 Q. She asked you about Quakerism. Do you have
22 reason to believe she acted on the information that you
23 provided to her?

24 A. Yes, I do.

25 Q. What is that?

1 A. Her and her mother showed up at a Quaker meeting.

2 Q. Did she ever speak with you about that later?

3 A. Yes, she did. She told me she enjoyed it.

4 Q. Let's go back to board business again and the
5 building project, this issue you discussed about fiscal
6 responsibility. What was the issue, as you saw it, for
7 the second term of the board?

8 A. What do I see the issue as? Was the building
9 project.

10 Q. Yes.

11 A. The building project was the main issue of the
12 four of us.

13 Q. And you've indicated, there was a division on the
14 board. What was the basis for the division?

15 A. They wanted a much more expensive project than we
16 did. Theirs was, I think, 30 some million, and ours was
17 about 19.

18 Q. Were there specific members of the board with
19 whom you differed in judgment with respect to the
20 building project?

21 A. Yes.

22 Q. Tell us who they are.

23 A. Lonnie Langioni, Larry Snook, Barrie Callahan.
24 I'm trying to think who else. And I think Shirley
25 Harnish was for it also.

1 Q. Was the building project the big issue of the
2 election or were there others for your second term?

3 A. The building project was the big issue.

4 Q. Did you run with others for this second term?

5 A. Yes.

6 Q. Who did you run with?

7 A. I ran with Angie Yingling, Alan Bonsell, myself,
8 and Casey Brown.

9 Q. Okay. Let's look at each of those members, and I
10 want you to describe whether you have any relationship
11 with them prior to?

12 A. I'm sorry.

13 Q. Do you have water?

14 A. Could you restate that?

15 Q. Yes. Do you have water?

16 A. Yes, I do.

17 Q. Okay.

18 A. I'm sorry, Pat. Yes.

19 Q. That's all right. Did you run with Mr. Bonsell?

20 A. Yes.

21 Q. Okay. And why did you choose to run with him?

22 A. Alan Bonsell had attended several meetings and
23 spoke out against the building project that they had
24 planned, and he was fiscally conservative, obviously.

25 Q. Was there any discussion of religion when you

1 decided to run with Mr. Bonsell?

2 A. No.

3 Q. Did you know Mr. Bonsell beforehand when you
4 decided to run?

5 A. No, I didn't.

6 Q. How about Angie Yingling? Why did you run with
7 her?

8 A. Same thing. She came to the board meetings and
9 was opposed to the building project.

10 Q. Was there any discussion of religion when you
11 decided to run with Angie Yingling?

12 A. No, none.

13 Q. And how about Casey Brown?

14 A. Casey and I were the minority members on the
15 board and was a good fit.

16 Q. When you decided to run with Casey and your
17 deciding whether you have a shared interest and can run
18 together, was there any discussion of religion?

19 A. No.

20 Q. I want to talk briefly about your impression of
21 the impact of the building project on the community, on
22 the board, the school. How did you see the impact of
23 the building project on the Dover Area community?

24 A. I saw it as it would increase taxes, you know.

25 Q. Okay. How about in terms of board meetings and

1 controversy? Was it a big issue or small?

2 A. It was very divisive. The meetings were
3 extremely divisive.

4 Q. Was there -- were there comments directed at the
5 board?

6 A. Yes, there were. There were many comments
7 directed at the board. They were adamantly against the
8 board.

9 Q. Okay. How about the, when you got on -- well,
10 let me ask you this. Did the election that you've
11 referenced for your second term have an impact on the
12 make-up of the board as it related to the building
13 project?

14 A. Yes, it did. It turned the board around to six
15 that were no longer in favor of the building project and
16 three who were still in favor of it.

17 Q. Who were they?

18 A. Lonnie Langioni, Larry Snook, and Barrie
19 Callahan.

20 Q. Did the election results quell criticism of the
21 board or did it continue?

22 A. On the board, did you say?

23 Q. Of the board. Did people still show up at
24 meetings to discuss the project?

25 A. No, not -- no, huh-uh.

1 Q. How about in terms of the individuals you've
2 mentioned? Did the election results affect their
3 continued participation on the board?

4 A. Yes, it did.

5 Q. Tell us how.

6 A. Excuse me. Larry Snook and Lonnie Langioni
7 resigned from the board. Barrie stayed.

8 Q. And did Barrie stay on the board for a long time
9 or did she later leave?

10 A. Barrie stayed for the remaining two years, to her
11 credit. I have to give her that.

12 Q. Now when Mr. Snook and Mr. Langioni resigned,
13 what action did the board take? Did they take any
14 action in response to the vacancies?

15 A. Yes, we replaced those two vacancies, of course.

16 Q. And do you remember who they were?

17 A. Yes, Bill Buckingham and Janey Cleaver.

18 Q. Okay. I want to look briefly at your
19 relationship with them before they came to the board.
20 Did you know Bill Buckingham --

21 A. Yes, I did.

22 Q. -- when he applied to fill the vacancy on the
23 board?

24 A. I'm sorry. I didn't wait until you finished. I
25 apologize.

1 Q. That's all right. Did you know Bill Buckingham
2 when he applied to fill the vacancy on the board?

3 A. Yes, I did.

4 Q. How did you know him?

5 A. Jeff Brown started the tax payer group. I went
6 to his meeting he had, and there were only two other
7 people that showed up. One of them was Bill Buckingham.

8 Q. And did you have any discussions with Mr.
9 Buckingham about change in the curriculum or bringing
10 religion to bear in the curriculum when you met him?

11 A. No, none.

12 Q. Had you had any such discussions with Mr.
13 Buckingham when he applied to fill the vacancy on the
14 board?

15 A. I'm sorry?

16 Q. Had you had any discussions of that nature
17 relating to the curriculum or bringing religion into the
18 schools when he applied to fill the vacancy on the
19 board?

20 A. No, none.

21 Q. Did you vote to approve Mr. Buckingham?

22 A. Yes, I did.

23 Q. And why did you do that?

24 A. Well, I knew from him going to Jeff's tax payer
25 group, he would be a fiscally conservative person.

1 Q. How about Jane Cleaver? Did you have a personal
2 relationship with Jane at the time she applied?

3 A. No, but Janey had attended many meetings, and I
4 knew her that way.

5 Q. Had you asked Jane Cleaver to apply for the
6 position when she did?

7 A. No, I did not.

8 Q. Had you asked Bill Buckingham to apply for the
9 position?

10 A. No. In fact, I believe it was Jeff Brown that
11 asked him to join the board.

12 Q. Did you vote to appoint Jane Cleaver?

13 A. Yes, I did.

14 Q. Why did you do that?

15 A. I thought she would be a good fit for the board.
16 She knew the vast majority of the people in the
17 community.

18 Q. There's been some testimony about board
19 retreat --

20 A. I'm sorry. I apologize.

21 Q. That's all right. There's been some testimony
22 about board retreats in 2002 and 2003. And I want to
23 ask you, as you sit here today, do you remember anything
24 specifically from those two board retreats?

25 A. Not at all. I shouldn't say, not at all. You

1 know, slim to none.

2 Q. Do you remember anything generally about the
3 retreats?

4 A. I remember the whole process of the retreat.
5 First, we came, we got our food, ate. Then the
6 administrators all have their couple minutes. And then
7 the board had their quick impressions. I'm sorry.

8 Q. Let's focus your attention on the 2002 retreat.
9 And I don't want to spend too much time on this. But do
10 you remember anything that Alan Bonsell said about
11 creationism at that retreat?

12 A. I don't remember a word he said at all that I
13 know of.

14 Q. How about prayer?

15 A. Huh-uh, no.

16 Q. Well, do you remember anything you said about --

17 A. No.

18 Q. Do you remember any discussion --

19 A. Nobody has reminded me yet.

20 Q. How about the 2003 retreat?

21 A. 2003 retreat?

22 Q. 2003 retreat. There was one held in March. As
23 you sit here today, do you remember any discussion of
24 creationism at that retreat?

25 A. No, none.

1 Q. How about prayer?

2 A. No.

3 Q. How about the social studies curriculum?

4 A. No.

5 Q. Do you remember a portion of the retreat in March
6 of 2003 where Dr. Nilsen solicited input from board
7 members?

8 A. He generally does that always at the end of the
9 retreat.

10 Q. Okay. Just give me a description of that portion
11 of the meeting. How long was it roughly?

12 A. They're all -- you mean, the board part.

13 Q. Yes.

14 A. It's just a quick go around. You just quickly
15 say anything that's on your mind.

16 Q. Okay. And about how long is that quick go
17 around?

18 A. One to three minutes. He doesn't stop you
19 usually. But it's very quick. It's late in the
20 evening, you understand. You want to get home.

21 Q. All right. Let me ask you this. Let's focus
22 your attention on the 2003 period and on the biology
23 text and curriculum. And I want to ask you, do you
24 remember any information that you received in 2003 that
25 related to the biology text?

1 A. I'm trying to think. I do remember getting
2 something in 2003.

3 Q. Let me be more specific. Do you remember
4 comments being made at board meetings about the biology
5 text?

6 A. Yes. Yes, I do.

7 Q. Okay.

8 A. Should I tell you about them?

9 Q. Yes, please.

10 A. I remember Mrs. Callahan. I think there was
11 another parent also that came and complained about the
12 kids not having biology texts.

13 Q. At this period, did you believe that students in
14 Dover did not have biology textbooks?

15 A. No. As far as, I had spoke to Bert Spahr before,
16 and it was my impression the issue with the biology text
17 was, they had texts, but they really weren't using them
18 hardly at all, because they really didn't fit the
19 curriculum well.

20 Q. Okay. Let me ask you this. Were the biology
21 texts purchased in 2003?

22 A. No, they were not.

23 Q. And do you have an understanding -- well, did you
24 vote to approve the text?

25 A. Excuse me?

1 Q. Did they come up for a vote?

2 A. No, they did not.

3 Q. Okay. Why?

4 A. Well, one, they weren't on the agenda ever. I
5 know they weren't. There wasn't money for them, I don't
6 think. I think money might have been set aside for
7 them, but somehow -- I'm not sure how it worked exactly.

8 Q. Let's look at the 2003 period, and let me ask
9 you, did you ever obstruct purchase of the biology text
10 because of some objection to evolution or evolutionary
11 theory?

12 A. No.

13 Q. Are you aware of any board member who tried to
14 obstruct purchase of the biology text because of an
15 objection to evolution or evolutionary theory?

16 A. No.

17 Q. Let's look at 2004. And let's look at your
18 committees. Did you serve on any committees in 2004?

19 A. Yes, I did.

20 Q. Can you remember which ones?

21 A. I think here we're talking about the curriculum
22 committee.

23 Q. Okay. How did you get on the curriculum
24 committee?

25 A. Alan Bonsell assigned me there.

1 Q. Do you know why you were put on the curriculum
2 committee?

3 A. I didn't ask.

4 Q. Did either Alan Bonsell or Bill Buckingham tell
5 you that they wanted to work intelligent design or
6 creationism into the curriculum?

7 A. No, they did not.

8 Q. Let's look at 2004, and take it from January to
9 the end of May. And I want to ask you, do you remember
10 any developments relating to the biology text or
11 curriculum in that portion of 2004, from January to the
12 end of May?

13 A. If I may, May and June, there were two curriculum
14 meetings I attended, and they both sort of go together.
15 So if I can go May and June.

16 Q. Okay. Well, do you have any specific
17 recollection of one in May and one in June or can you
18 separate them?

19 A. A little bit, yeah.

20 Q. Well, can you tell us anything that you recall
21 specific to a meeting in May?

22 A. The first one, as I recollect, is when they
23 presented books they had, I think -- they had family
24 consumer science book, I think, purchased chemistry
25 book, and the biology book there.

1 Q. Did you do anything as a result of this meeting?

2 A. Yes, I asked if I could have a copy of the new
3 book and a copy of the old book. That's what I usually
4 did. I usually liked to look at both books.

5 Q. Why was that?

6 A. Just to compare them sort of.

7 Q. And did you come to a conclusion based on your
8 review of the books?

9 A. I came to a conclusion that the chemistry book.
10 She needed a new one. It was worn out. And the family
11 consumer science book looked new, and so did the biology
12 book.

13 Q. Let's look at the biology book. Did you have an
14 objection to the biology book based on its presentation
15 of evolutionary theory?

16 A. No.

17 Q. And this has been raised as an issue here. Is
18 evolutionary theory in any way inconsistent with your
19 religious convictions?

20 A. No, it is not.

21 Q. Do you remember anything else about the meeting
22 in May?

23 A. I remember the teachers talked a little bit about
24 the books. I think there was in, I don't remember more
25 than the books that they wanted to buy for family

1 consumer science and chemistry, but I recollect there
2 was a couple different biology books there.

3 Q. You've mentioned two meetings during this period,
4 and I know you can't distinguish them. If what you said
5 is proper to the May meeting, tell us what you can
6 recall about these meetings in the spring period?

7 A. The second meeting, as I recall -- like I say,
8 this is, take it as my recollection, and it's not firm,
9 you understand. Bill came with a list of issues that he
10 had with the book. I also -- I'm not sure -- we
11 discussed curriculum, too. I'm not sure if we discussed
12 them at both or just the last meeting. And Bill went
13 through his list of concerns in the biology book.

14 Q. Do you remember any specific concerns that he
15 raised?

16 A. They were pretty much all evolutionary concerns.

17 Q. Did the teachers respond to Mr. Buckingham?

18 A. Yeah, I felt they were very understanding and
19 very supportive and wanted to work with him.

20 Q. You've mentioned some discussion of gaps and
21 problems. Actually, let me strike that, because you
22 haven't. You've mentioned some discussion of the
23 curriculum. Can you recall any specifics about that
24 discussion?

25 A. Can I go back once? I do remember the second

1 meeting. Bill did say a few things that -- the teachers
2 were nicer than Bill was at that meeting. How's that?
3 Is that fair?

4 Q. I guess you could describe the tone, but let me
5 ask you. You've mentioned curriculum. Do you recall
6 any specific changes --

7 A. Excuse me.

8 Q. Do you recall any specific changes being
9 discussed to the curriculum?

10 A. Yes.

11 Q. Okay. Tell us what you recall.

12 A. We talked about the gaps, other theories of
13 evolution.

14 Q. And how was the tone of the meeting? Was it
15 strained or was it generally cordial? How would you
16 describe it?

17 A. No, the first meeting, I remember, was extremely
18 cordial. The second meeting was okay. But I wouldn't
19 say it was as good as.

20 Q. Let's look at the board meetings in June. Do you
21 have any specific recollection of those board meetings?

22 A. Yes, I do. I was going to say, the two though,
23 there were two, a planning meeting and a board meeting.
24 And they sort of go together, you know what I mean. One
25 is a planning and one is a board meeting.

1 Q. Let's look at them together then, and let me ask
2 you. Do you remember any discussion of the biology text
3 at the board meetings in June?

4 A. I do. I'm trying to think what all I remember.

5 Q. Well, let's look at it from your standpoint. Do
6 you recall making comments about the biology text during
7 this June period?

8 A. Yes, I did. I said that I thought the books
9 looked new and had a little reservations on that issue.

10 Q. Excuse me?

11 A. And had some reservations on that issue.

12 Q. Well, describe them. What do you mean by that?

13 A. Well, this was a '98 -- we had a '98 textbook.
14 This was a 2002 textbook. And that's only four years
15 difference. And we generally go seven years. So even
16 though I didn't understand, they said we were up on the
17 cycle, but to me, that four years isn't seven years.

18 Q. Well, let me ask you. Do you remember
19 creationism coming up at board meetings in June?

20 A. Yes.

21 Q. Do you remember how?

22 A. Well, I remember -- I'm trying to think. There
23 are people in the audience talking about creationism.
24 It seems to me -- it seems to me, Jeff was talking
25 intelligent design, but he was also talking creationism,

1 I think. That's my recollection of the board. I'm
2 trying --

3 Q. Do you remember other board members discussing
4 creationism when it was brought up?

5 A. No, no, I don't remember any other ones.

6 Q. Do you recall intelligent design being brought up
7 at board meetings?

8 A. Yes, I do.

9 Q. Okay. Do you recall discussion of intelligent
10 design?

11 A. Yeah. My recollection is, it seems to me -- I
12 was thinking Jeff was the first one to bring up mention
13 of intelligent design. And in the conversation, Alan
14 and Noel and Bill got in on the conversation.

15 Q. Okay.

16 MR. GILLEN: Your Honor, if you'd bear with
17 me for a second, I've got to look for an exhibit.

18 THE COURT: That's fine.

19 MR. GILLEN: Forgive me. I apologize, Your
20 Honor. I omitted to prepare this. May I approach the
21 witness?

22 THE COURT: You may.

23 BY MR. GILLEN:

24 Q. Now I know, since this trial began, you've
25 actually come across something that you recollect, and I

1 want to look at that. I've shown you what has been
2 marked Plaintiffs' Exhibit 149.

3 A. Yes.

4 Q. Now let me ask you. Do you recognize that?

5 A. Yes, I do.

6 Q. And tell us, what is it?

7 A. It's views on the origins of the universe and
8 life.

9 Q. Okay. And have you seen this before?

10 A. Yeah, I did. I didn't remember I saw it until it
11 was up on there.

12 Q. Okay. Well, tell us about it. What do you know
13 about that document?

14 A. I got it. I'm not exactly sure who gave it to
15 me. And I had conversations with Jeff and Casey, and I
16 gave this to Casey.

17 Q. Do you recall approximately when you gave it to
18 Casey Brown -- is that Casey Brown?

19 A. Yeah, uh-huh. I'm sorry. Yes, sir.

20 Q. And about when did you give it to her?

21 A. It was around that time, around June.

22 Q. And what was your point in giving her this
23 document?

24 A. Well --

25 THE COURT: Give me the exhibit number

1 again, Mr. Gillen.

2 MR. GILLEN: Yes, it's Plaintiffs' 149.

3 THE COURT: P-149. I'm sorry.

4 MR. ROTHSCHILD: Your Honor, would you like
5 it on the screen?

6 THE COURT: Why don't you. That would be
7 helpful to me. I have approximately 500 binders sitting
8 next to me. All right. You may proceed.

9 MR. ROTHSCHILD: This is the second page of
10 that exhibit, Your Honor.

11 THE COURT: Thank you.

12 THE WITNESS: All right. The point was, if
13 you go to the first column, second down, it's
14 intelligent design of the world. Right. If you go --
15 even -- then if you go down that column to the bottom,
16 even to Charles Darwin. So the point is that, according
17 to this sheet, of course, this is -- this isn't fact.
18 This is just information that somebody gave me. Okay.

19 BY MR. GILLEN:

20 Q. Okay. But I'm interested in your point.

21 A. My point was, here was someone that viewed
22 Charles Darwin believing in intelligent design.

23 Q. And did you pass this on to anyone?

24 A. Yeah, Casey and Jeff. I was going to say also,
25 if you want to look -- if you look, the second column at

1 the bottom is the intelligent design movement. Okay.

2 Q. Okay.

3 A. I view those as different views.

4 Q. Okay. But your point to the Browns was what?

5 A. My point to the Browns was that, according to
6 this, that Charles Darwin himself believed in
7 intelligent design.

8 Q. And why did you give it to the Browns? Had that
9 come up? Was there a discussion of it?

10 A. Yes.

11 Q. When you gave her this document, were you giving
12 it to her in an effort to persuade her to accept
13 intelligent design for religious reasons?

14 A. Not at all.

15 Q. What were you trying to do?

16 A. We just had discussions. They viewed differently
17 than I did.

18 Q. Well, did you really know that much about
19 intelligent design?

20 A. Not at all, no.

21 Q. Did you try and acquaint yourself with it?

22 A. Yes, I did.

23 Q. What did you do?

24 A. I Googled.

25 Q. Excuse me?

1 A. I Googled. Googled.

2 Q. Oh, okay.

3 MR. GILLEN: It's been a long trial, Your
4 Honor?

5 THE COURT: It certainly has. It wouldn't
6 have made sense 10 years ago. It makes better sense
7 today.

8 MR. GILLEN: I'm glad my kids aren't here.

9 BY MR. GILLEN:

10 Q. Okay. Let's go on then. When you Googled it,
11 did you learn much by way of the substance of
12 intelligent design?

13 A. You just see what's there.

14 Q. Did you reach conclusion as a result of your
15 Googling?

16 A. No, I did not.

17 Q. Let's look at July. And I want to ask you, do
18 you recall --

19 A. Understand, I did not reach a conclusion from
20 this sheet either.

21 Q. No, I understand. I thank you for making that
22 plain. And again, this is something that someone passed
23 on to you?

24 A. That's correct.

25 Q. Do you remember who?

1 A. I think. And I don't want to swear to this, all
2 right. But I believe it was Dan Singlinger.

3 Q. And how do you know him?

4 A. Just a friend.

5 Q. Let's look at July then and action on the text?

6 A. I'm sorry. Repeat that.

7 Q. Let's look at July then and any action on the
8 biology text. Do you recall any board action relative
9 to the purchase or approval of the biology text in the
10 July 2004 period?

11 A. Yes, I do. I remember -- it seems to me, it was
12 Bert that came up to the podium and -- I'm not sure, but
13 it seems to me, Bert said she had just received a 2004
14 edition of the biology text and they were going to
15 review it.

16 Q. Do you remember another text coming up during
17 this July 2004 period?

18 A. Yes, Pandas book.

19 Q. And can you tell us what you remember about how
20 that book came up?

21 A. It seems to me, Bill had a copy there, and he
22 said it was on intelligent design.

23 Q. Bill had a copy there. Where do you mean?

24 A. At the board meeting. I'm not sure if it was the
25 first or second board meeting though in July.

1 Q. Do you have any specific recollection of two
2 board meetings in July?

3 A. No. But I mean, they go -- planning meetings and
4 board meetings, in my mind, run together all the time.

5 Q. Did you see the text at the time?

6 A. There, no. He had -- he only -- you know what I
7 mean. He didn't have any books to share with us.

8 Q. Okay. Did you later get a copy of the book?

9 A. Yes, I did. I called Mike Baksa and got a copy.

10 Q. Did you review the text?

11 A. Can I elaborate on this?

12 Q. If you'd like to explain your answer, go ahead.

13 A. Yes, I did. I got the book from Mike. But as I
14 recall, until I got home, Jeff had gone up for the book
15 at the same time. And when he found out I had the book,
16 I had a message already, Jeff wanted to look at the
17 book. And so I called him, and I told him I would look
18 at it quick. And --

19 Q. Did you pass it on to him?

20 A. Passed it on to him, yeah. Yes, I did. So I
21 only looked at it very briefly.

22 Q. Okay. Did you have any discussion of the text
23 with Mr. Brown prior to the August board meeting?

24 A. Well, when he came to pick up the book, he wanted
25 to know what I thought of it, and I wouldn't tell him.

1 Q. Why was that?

2 A. Just -- I just, you know, I wasn't telling him
3 what I thought. I wanted him to form his own opinion.

4 Q. Okay. And did Mr. Brown take the book from you?

5 A. Excuse me?

6 Q. Did Mr. Brown take the book from you?

7 A. Yes, he did.

8 Q. Did he later contact you?

9 A. Can we go back? When you said about any other
10 discussion. We did have discussion then afterwards. I
11 apologize.

12 Q. Based on that discussion, did you get an
13 understanding of Mr. Brown's position on the text?

14 A. Yes, I did.

15 Q. What was --

16 A. He felt it was -- I think his words were, it
17 offended his religion.

18 Q. And did you agree with Mr. Brown?

19 A. No, I didn't.

20 Q. Why?

21 A. I didn't see any religion in it. I thought it
22 looked like science to me.

23 Q. Well, based on your review of Pandas, did you
24 think it was a text that addressed creationism?

25 A. No, I didn't.

1 Q. Did you think it was a religious text?

2 A. No, I didn't.

3 Q. When you got this book and looked it over, you've
4 mentioned that Bill Buckingham brought it up at a board
5 meeting. Had you ever discussed the book with anyone
6 prior to that time?

7 A. Excuse me. Say it again, Pat.

8 Q. Sure. You mentioned that Mr. Buckingham brought
9 up the book in July?

10 A. Uh-huh.

11 Q. Prior to that first mention, had you ever
12 discussed the book Of Pandas with anyone?

13 A. Before he brought the book to me?

14 Q. Yeah.

15 A. I never heard of the book before.

16 Q. Okay. You've mentioned a discussion with Mr.
17 Brown. Had you ever discussed with Mr. Buckingham the
18 text prior to your discussion with Mr. Brown?

19 A. When I discussed the text with anyone else?

20 Q. Yeah.

21 A. Is that what you're asking?

22 Q. Yes. Had you discussed it with Mr. Buckingham
23 prior to passing it on to Mr. Brown?

24 A. Huh-uh, no.

25 Q. Had you discussed it with Mr. Bonsell prior to

1 passing it on to Mr. Brown?

2 A. No. Understand, from when I picked the book up
3 to when Jeff came and got it was maybe an hour and a
4 half, two hours.

5 Q. Okay.

6 A. It wasn't long in my possession.

7 Q. Okay. And let's look at that. You've already
8 mentioned reviewing the Miller and Levine text. About
9 how long did you spend reviewing that text?

10 A. About, I'm going to say, three nights. When I
11 say -- right before I go to bed, I take something with
12 me and look at.

13 Q. What would be -- can you give us an estimate
14 concerning the total amount of time you spent reviewing
15 the Miller and Levine text?

16 A. Maybe six hours.

17 Q. Okay. Did there come a time when the Miller and
18 Levine text, recommended by the teachers, came up for a
19 vote by the board?

20 A. Yes, it did. It came up in August.

21 Q. Okay. And let's -- let me ask you what you
22 recall about that meeting. Do you recall it coming up
23 for a vote?

24 A. Yes, I do.

25 Q. And do you remember the vote?

1 A. Yes, it was four-four.

2 Q. And did you vote with Mr. Buckingham?

3 A. Yes, I did.

4 Q. Now prior to voting at this meeting on the text,
5 had you spoken with Mr. Buckingham about the voting?

6 A. No, I didn't talk to him about voting.

7 Q. Do you recall the first vote that was taken on
8 approval of the text recommended by the faculty?

9 A. That was the one we were just talking about?

10 Q. Yeah. Do you recall the vote, the vote outcome?

11 A. Yeah, it was four-four.

12 Q. Okay. Now let me ask you. Why did you cast your
13 vote?

14 A. We had x amount of dollars. We bought the chem
15 books, which we had to have for Bert. They then bought
16 the family and consumer science books, which I didn't
17 want to buy. And we didn't have enough money left. We
18 were like \$5000.00 short for that year for -- these were
19 the science books.

20 Q. You happened to mention Of Pandalas. Were you
21 voting with Bill to link approval of the science text
22 recommended by the faculty with approval of Pandalas?

23 A. No, no.

24 Q. Prior to casting that first vote, had you spoken
25 with Heather Geesey about the way you were going to

1 vote?

2 A. No.

3 Q. Prior to the first vote, had you spoken with
4 Angie Yingling?

5 A. No.

6 Q. Do you recall what happened when the results of
7 the first vote came in, four-four?

8 A. Yeah, there was a big discussion.

9 Q. Do you recall any specific comments that were
10 made?

11 A. Yeah. How can you do this? They need their
12 books. They got to have their books. It was like it
13 was a world-ending crisis if they didn't have books.

14 Q. What was your view on that concern?

15 A. This was 2004. We didn't quite have enough
16 money. We could have taken it out of the fund balance.
17 But we still were only six years -- we weren't at seven
18 years, in my mind. And we had spent the money on the
19 family and consumer science books, which I didn't feel
20 we should have spent it on there. We should have spent
21 it on the biology books instead.

22 Q. How about your sense for whether the texts were
23 essential to classroom instruction? Did you have an
24 impression or opinion on that when you voted in August?

25 A. I'm sorry?

1 Q. How about -- you've mentioned that you believed
2 at one point the texts weren't being used. When you
3 voted in August, did you think they were essential for
4 instruction?

5 A. No, because they already -- I know they didn't
6 fit the curriculum, and that was my impression from
7 Bert, that they didn't. And I felt, one more year isn't
8 going to hurt them.

9 Q. Well, do you remember what happened after the tie
10 vote? Was there another vote?

11 A. Yes, there was. Angie said, well, she felt they
12 needed their books. And since she was one of the
13 dissenters, she put it back up.

14 Q. Do you recall the outcome of that vote?

15 A. It was five-three.

16 Q. And --

17 A. I think.

18 Q. What was the implications of the vote for the
19 approval of the text?

20 A. What do you mean? I'm sorry.

21 Q. Was the text approved or not?

22 A. The text was approved.

23 Q. Okay.

24 MR. GILLEN: Your Honor, is this a good time
25 for a break?

1 THE COURT: I think we could take a break at
2 this point. Why don't we take a 20-minute break, and we
3 will return and pick up your direct examination with the
4 witness after that. We'll be in recess.

5 MR. GILLEN: Thank you, Your Honor.

6 (Whereupon, a recess was taken at 10:15 a.m.
7 and proceedings reconvened at 10:37 a.m.)

8 THE COURT: All right. Mr. Gillen, you may
9 pick it back up.

10 MR. GILLEN: Thank you. Your Honor, may I
11 approach the witness?

12 THE COURT: You may.

13 THE WITNESS: Can I set these here?

14 THE COURT: Yes.

15 THE WITNESS: Can I set these here?

16 THE COURT: You can ask Mr. Gillen, too.
17 We'll let him weigh in on it.

18 **DIRECT EXAMINATION (CONTINUED)**

19 BY MR. GILLEN:

20 Q. Oh, Lord. All right. We're moving past the
21 August meeting into the fall of 2004 and some
22 developments that relate to the biology curriculum. And
23 I'd ask you to look at Defendants' Exhibit 44.

24 A. Okay.

25 Q. Do you recognize that?

1 A. This first is the memorandum. Is that what we're
2 looking at?

3 Q. Yes.

4 A. This is of September 21st, 2004. It is the
5 recommended curriculum change for biology.

6 Q. Okay. Do you remember receiving this?

7 A. Not as I sit here, no, I don't.

8 Q. Well, flip the page and take a look at the next
9 page. I think that will help you. Look at the page
10 with the baits number 32 on it. Do you remember
11 receiving a document like this from Mr. Baksa in the
12 fall of 2004?

13 A. It looks familiar, but I don't remember getting
14 it at that time, but I do remember seeing this. Is that
15 what you're asking?

16 Q. Yeah.

17 A. Yes.

18 Q. That's it. Now let me ask you to look at
19 Defendants' Exhibit 46.

20 A. Am I supposed to keep ahold of this one, too?

21 Q. No, that's fine. Just on to 46, please.

22 A. Okay.

23 Q. Do you recognize that document?

24 A. Yes. Obviously, this would be a memorandum, and,
25 obviously, who it's to is to the curriculum committee

1 members.

2 Q. Look at the reference to a meeting.

3 A. October 7th, 2004, 3:15. Okay.

4 Q. Okay. Do you remember receiving this memo?

5 A. No.

6 Q. Do you remember attending a meeting on October
7 7th?

8 A. No, but I probably did.

9 Q. Let me ask you. Well, let me stop here. Before
10 we go on, look at Defendants' Exhibit 46?

11 A. Yes, I do. I do remember now. I do, thinking
12 about it.

13 Q. Okay.

14 A. Do you want me to look at 46 yet, or what did you
15 say?

16 Q. Okay. Do you remember seeing it now?

17 A. I remember -- I now visualize, I'm pretty sure,
18 the meeting.

19 Q. With that in mind --

20 A. A little bit.

21 Q. I want you to look at Defendants' Exhibit 50.

22 A. Yes.

23 Q. Do you recognize that document?

24 A. Yes, this is all the recommendations for all the
25 different curriculum changes.

1 Q. Okay. Before we go to that, I want you to tell
2 me, do you remember there was a time when textbooks Of
3 Pandas were donated to the school district?

4 A. Yes, I do.

5 Q. And I want to ask you, did you have a role in
6 securing that donation?

7 A. No role whatsoever.

8 Q. Did you discuss the donation of the book with
9 anyone?

10 A. No.

11 Q. And did you contribute any money personally to
12 the purchase of the book?

13 A. I did not.

14 Q. Let's look at the Exhibit 50, and let me ask you,
15 do you remember attending a meeting on October --

16 A. You know what. Am I supposed to get rid of this
17 curriculum meeting --

18 Q. No. Is that Exhibit 50, Sheila?

19 A. Yeah. Excuse me. Yes.

20 Q. Okay. And I'd ask that you direct your attention
21 to that.

22 A. Yes.

23 Q. And I'd ask you whether you remember being at a
24 meeting on or about October 17th, 2004?

25 A. Yes, I do.

1 Q. Do you remember seeing this document?

2 A. Yes, I do.

3 Q. Okay. Let's talk about that. I notice that
4 there is no position attributed to you on this memo. Is
5 there a reason for that?

6 A. I just wanted to go to the meeting and see what
7 other people had and listen to their arguments.

8 Q. Well, let me ask you a little more about that.
9 At this time, you have in front of you a document
10 entitled proposed curriculum changes. Did you have a
11 strong opinion on whether a curriculum change was
12 necessary or desirable?

13 A. I had no strong opinion whether it was necessary,
14 no.

15 Q. So why are you attending this meeting?

16 A. I wanted to hear their arguments for it.

17 Q. And what do you mean by that?

18 A. I want to hear what they have to say, what they
19 want, and why.

20 Q. Okay. Now you've been on the board curriculum
21 committee in 2004 and party to some discussion between
22 board members and teachers?

23 A. Yes.

24 Q. Did you have a sense as you attended this meeting
25 concerning whether those discussions were at all

1 fruitful?

2 A. Yes. I thought the administration and the
3 teachers were working together to come up with
4 something, an option.

5 Q. If you look at Exhibit 50, at the page bait stamp
6 35, under the heading, A, recommendations, there's a
7 number of positions that have been laid out there. Do
8 you remember looking at those?

9 A. Yes, I do.

10 Q. And do you remember having a sense for whether
11 they were different, and if so, how?

12 A. Well, yeah. Mr. Buckingham's was the only one
13 that had intelligent design. Casey wasn't at the
14 meeting. She didn't come. But she sent this in.
15 Alan's was, to me, very similar to the administration's
16 and staff's.

17 Q. Okay. Do you recall whether it was a long
18 meeting?

19 A. No, it was not.

20 Q. I'd ask you to direct your attention to the
21 portion of Exhibit 50 --

22 A. Excuse me.

23 Q. If you would look at the page of Exhibit 50 that
24 has 36 stamped in the lower right-hand corner?

25 A. Yes.

1 Q. And you'll see some handwritten notations?

2 A. Yes, I do.

3 Q. Do you have an understanding concerning how those
4 notations got there?

5 A. Yes. We discussed it. And as I listened to
6 them, part of my argument was, well, if you want to
7 mention other theories of evolution, you ought to have
8 an example of what other theories are. So I sided with
9 Bill because I felt, just saying, other theories, well,
10 what are other theories? So Alan went along with us and
11 agreed to include, but not limit to, intelligent design.

12 Q. All right. We're leading up to the meeting of
13 the board on the 18th, so I want to just get you to look
14 at a few documents and discuss those briefly with you.
15 If you would look at Defendants' Exhibit 60?

16 A. 60?

17 Q. 60.

18 A. Okay.

19 Q. Do you recognize that document?

20 A. Do you want me to just look at the memorandum?

21 Q. Yeah. If you would, look at both pages. Do
22 whatever it takes to see if you recognize that document?

23 A. I'm sure I got this. I don't remember, you know,
24 getting it at the time, but it looks familiar.

25 Q. Okay. Well, let me ask you to look at the

1 subject matter of the memo, which is Defendants' Exhibit
2 60, at the page with the number 17 in the lower
3 right-hand corner.

4 A. 17, memorandum?

5 Q. Yeah.

6 A. Yes.

7 Q. Do you see a description of the attached
8 document?

9 A. It says, attached are the recommended changes to
10 the biology curriculum from the board curriculum
11 committee.

12 Q. Okay. With that in mind, I'd ask you to flip to
13 the page of Defendants' Exhibit 60 which has the page 18
14 stamped on it?

15 A. Yes.

16 Q. Looking at that document, does that strike you as
17 the board curriculum committee's --

18 A. Yes, it is.

19 Q. Now I'd ask you to look at Defendants' Exhibit
20 61.

21 A. Okay.

22 Q. And again, I direct your attention to the
23 description of the attached document on the page of
24 Defendants' Exhibit 61, bait stamped number 19 in the
25 lower right-hand corner?

1 A. Yes, I apologize. Yes, attached are the
2 recommended changes to the biology curriculum from the
3 administration and staff.

4 Q. Okay. And I'd ask you to flip to the next
5 portion of that exhibit with the bait stamp number 20 on
6 it?

7 A. Yes.

8 Q. And examine that document. Do you recognize
9 that?

10 A. Yes, that's -- that was from the --

11 Q. Do you remember receiving this in the period
12 leading up to the October 18th, 2004, board meeting?

13 A. Like I said before, I'm sure we did -- I did, but
14 --

15 Q. Okay.

16 A. My recollection --

17 Q. Do you recognize the document?

18 A. Yes, I do.

19 Q. Okay. Thank you. Look then next at Defendants'
20 Exhibit 68?

21 A. 68. Okay. This says, attached is a second draft
22 of the recommended changes to the biology curriculum
23 from the administration and staff.

24 Q. Again, I'd ask you to direct your attention to
25 the second page of that exhibit, which has the baits

1 number 22?

2 A. Okay.

3 Q. Do you recognize that document?

4 A. Yes, this has the note, the origins of life is
5 not taught.

6 Q. Okay. Do you remember receiving this document as
7 you went into or leading up to the October 18th, 2004,
8 board meeting?

9 A. No, but I did see this.

10 Q. Okay. Do you remember voting on three versions
11 of the curriculum change that night?

12 A. Yes.

13 Q. Defendants' Exhibit 60.

14 A. Excuse me. I'm sorry.

15 Q. That's quite all right. Defendants' Exhibit 60
16 is one version, correct?

17 A. Okay.

18 Q. Defendants' Exhibit 61 is another version,
19 correct?

20 A. All right.

21 Q. And Defendants' Exhibit 68 is a third version,
22 correct?

23 A. Yes.

24 Q. Okay. Do you remember seeing any other versions
25 in the lead-up to the October 18th, 2004, board meeting?

1 A. Not to my recollection, no.

2 Q. Let's talk about the board meeting. As you went
3 into the board meeting, did you see a big difference
4 between the various versions?

5 A. No.

6 Q. Do you remember any public comment being made at
7 the beginning of the October 18th board meeting?

8 A. Yeah, this is when, I believe, Bert got up and
9 talked, and it became apparent that she strongly did not
10 support having the words intelligent design in the
11 curriculum change.

12 Q. Okay. Do you remember anything specific she
13 said?

14 A. Yeah. She quoted several different law cases.

15 Q. Do you remember a response to Ms. Spahr's
16 statement?

17 A. Yes, Mr. Buckingham said, where did you get your
18 law degree?

19 Q. Did you have a reaction to that statement?

20 A. (No response.)

21 Q. What was that reaction?

22 A. He shouldn't have said it.

23 Q. Do you remember anyone else who spoke at that
24 meeting?

25 A. Yeah. I remember Jen Miller talked, but I don't

1 remember what she talked -- I'm trying to think what she
2 talked about.

3 Q. If you would, Sheila, speak into the microphone.

4 A. I'm sorry. I was thinking. I was trying to
5 think at the same time. I apologize.

6 Q. That's all right.

7 A. Yes.

8 Q. When you say Bill shouldn't have offered that
9 retort to Bert's comment, what do you mean by that?

10 A. That wasn't nice.

11 Q. Well, let's talk about the process of voting. Do
12 you remember how that process began?

13 A. Yes.

14 Q. Okay.

15 A. Noel started out. He made several different
16 changes or motions. He made several different motions
17 of different options.

18 Q. Okay. You know, to help you out here --

19 A. Is that what you're referring to?

20 Q. Yeah, I'm referring to what you remember, but
21 let's do this to try to help you out. Would you look at
22 Defendants' Exhibit 64? Again, I'd ask you to look at
23 the page with the baits number 158 in the lower --

24 A. 158?

25 Q. 158.

1 A. Okay.

2 Q. Now let me ask you. What was your reaction to
3 Noel Weinrich's motions?

4 A. I didn't get the point.

5 Q. What do you mean by that?

6 A. I didn't understand what his point was that he
7 was trying to make.

8 Q. Did you see any meaningful difference in the
9 versions of the curriculum change that were in front of
10 you at that time?

11 A. No.

12 Q. Okay. How about Mr. Weinrich's motions? Did you
13 see them having a point?

14 A. I didn't understand where he was going with it.

15 Q. You've mentioned some objection that the teachers
16 made at the beginning of this meeting. Did you agree
17 with the objections that were being raised to the
18 curriculum change?

19 A. Run that by me again.

20 Q. Sure. You've mentioned that there were some
21 objections to the proposed curriculum changes that were
22 voiced in the public comment?

23 A. Yes.

24 Q. And I believe you said that they were voiced by
25 the teachers, is that correct?

1 A. Yes, that's correct. They were concerned they
2 were going to be forced into teaching creationism, I
3 think.

4 Q. Okay. And do you recall whether there was a
5 response to that from board members?

6 A. They were told they were not teaching
7 creationism. We were not having them teach intelligent
8 design even.

9 Q. Do you remember, during the process of the
10 voting, Mr. Bonsell making a motion to amend?

11 A. Yes. Yes, he made the motion to add on a note,
12 the origins of life, you know what I mean, that note,
13 yes, onto our board curriculum committee recommendation
14 motion.

15 Q. Did you have an understanding of Mr. Bonsell's
16 purpose in doing so?

17 A. It was to address that concern.

18 Q. And what concern?

19 A. The concern that they were not going to be
20 teaching intelligent design. They weren't going to be
21 teaching -- if they interpreted it as creationism, they
22 weren't going to be teaching that either.

23 Q. Did you vote to support the motion proposed by
24 Mr. Bonsell?

25 A. Yes, I did.

1 Q. And why did you do that?

2 A. Because they do not teach origins of life. Is
3 that what you're asking?

4 Q. That's what I'm asking.

5 A. And to direct their concerns, to direct the
6 teachers' concerns.

7 Q. And is it your recollection that the final
8 version of the proposed curriculum change was worked out
9 on this night of the meeting?

10 A. Yes, it was.

11 Q. Do you remember board members resigning at the
12 conclusion of this meeting?

13 A. Yes, I do.

14 Q. Tell us what you remember about that.

15 A. At the end of the meeting, Casey resigned first,
16 and gave a lengthy dialogue chastising the board, and
17 then Jeff resigned, too.

18 Q. And what was your reaction to their resignation?

19 A. I was extremely disappointed.

20 Q. And why is that?

21 A. They're my friends.

22 Q. Some criticism was made of the board in
23 connection with these resignations. Did you agree with
24 that?

25 A. Excuse me?

1 Q. Some criticism was made at the board with respect
2 to these resignations in evidence here. Did you agree
3 with that criticism?

4 A. What did you say? I'm sorry.

5 Q. Excuse me.

6 A. I'm sorry, Pat. Excuse me.

7 Q. You've mentioned the statements that Mrs. Brown
8 made?

9 A. Yes.

10 Q. Did you perceive that as critical of the board or
11 favorable?

12 A. Critical.

13 Q. Did you agree with the criticism she offered?

14 A. No, I felt hurt.

15 Q. At the time that this curriculum vote was taken,
16 were you voting for a religious reason?

17 A. No.

18 Q. I'd ask you to look next at Defendants' Exhibit
19 65.

20 A. Okay.

21 Q. Do you recognize this document? Maybe if you
22 flip to the next page?

23 A. Okay. Yes. This is the statement that's read.
24 Excuse me. Okay. This is the statement that the
25 administration reads. Is that what you're asking?

1 Q. Did you play any role in drafting that statement?

2 A. No, I did not.

3 Q. Do you recall reviewing the draft at some point?

4 A. Yes, I do.

5 Q. Now let me ask you. When the curriculum change
6 was put in place, did you believe a statement would be
7 necessary?

8 A. No, I did not.

9 Q. Did you have something in mind when you voted for
10 the proposed curriculum change?

11 A. I just felt the teachers would present it however
12 they saw fit.

13 Q. And did you see a problem with that?

14 A. No, not at all.

15 Q. As we move forward from this meeting, let me ask
16 you. Did you become aware of a controversy surrounding
17 the reporting on this meeting, the press reporting?

18 A. Yeah.

19 Q. Okay. Tell me what you recall about that.

20 A. We've had problems. We've had strained relations
21 with the newspaper for some time. And it wasn't a good
22 situation.

23 Q. Well, you perceived this strained relation. How
24 far back does it go?

25 A. It goes back, jeez, when -- when we were doing

1 the building project, the newspapers took a position
2 against us, as the board of directors, us, the
3 conservative board of directors. They wrote editorials
4 against us. And took positions that way.

5 So that each -- so we've had strained relations
6 for some time. And then another instance, we had --
7 when we did the pledge, it seemed almost deliberate that
8 the newspaper, they put in, in the front of the section,
9 they put a little block of what you're doing, and
10 they're putting, the Dover School Board wants to take
11 under God out of the pledge. And then the next meeting,
12 we had -- I mean, we had -- our room was more than
13 packed.

14 Q. Was the board contemplating taking under God out
15 of the pledge?

16 A. No, we were not.

17 Q. Do you remember Mr. Buckingham saying anything in
18 connection with that meeting?

19 A. Excuse me?

20 Q. Do you remember anything that Mr. Buckingham said
21 that was reported in connection with that meeting?

22 A. He said something the meeting before.

23 Q. Okay. Tell us about that.

24 A. When the motion for the pledge for under God came
25 up, they wanted to send a resolution supporting under

1 God. This is when the big issue was up, I don't -- when
2 the lawsuit was with the Supreme Court or whatever. He
3 wanted to send a resolution. And I raised my hand and
4 said that I couldn't -- I didn't support the resolution.

5 And Bill immediately -- before I even got my
6 statement finished, he comes down my throat verbally at
7 me and shouts, 2000 years ago, somebody died on a cross
8 for you. Can't you take a stand for him? And to that,
9 Jeff Brown comes to, if you want to call it, to my
10 defense, and goes, whoa, you know, are you saying that's
11 a Christian God in the pledge? And we were off to the
12 races at a big verbal heated debate.

13 Q. Did you understand that other board members
14 shared Mr. Buckingham's criticism of you? Did they
15 express support for that position?

16 A. Oh, no. Jeff and Casey both supported my
17 position the first meeting. And in the second meeting,
18 when we voted, Jeff and I were the only two that did not
19 support the motion.

20 Q. Did you ever do anything?

21 A. I was going to say, I did get to explain my
22 position though.

23 Q. Okay. Let me ask you this. Did you ever do
24 anything personally to address what you perceived as
25 inaccurate reporting?

1 A. Yes.

2 Q. Tell us what you did.

3 A. I regrettably had words with Joe.

4 Q. Joe who?

5 A. Maldonado.

6 Q. And when was that?

7 A. A couple times. I got to the point that I didn't
8 talk to him.

9 Q. Is this prior to the curriculum dispute or in
10 connection with the curriculum dispute?

11 A. Before that.

12 Q. What was the issue that you were complaining
13 about? What reporting concerned you? What was the
14 issue? Do you recall?

15 A. There were numerous. I don't have anything
16 particular.

17 Q. Okay. Let me ask you to look at Defendants'
18 Exhibit 103.

19 A. Okay.

20 Q. Do you recognize that?

21 A. Biology curriculum press release. Yes.

22 Q. Do you recognize that?

23 A. Yes.

24 Q. Now let me ask you, when the curriculum change
25 was voted for on October 18th, 2004, was there any

1 discussion for a need for a press release?

2 A. Yes, there was. People came from the community
3 and said they wanted more information, and there were
4 concerns -- people came there and said, why are you
5 teaching creationism? Why are you teaching intelligent
6 design? And we tried to explain to them, we're not
7 doing that. And so I think it was Alan's idea that we
8 put out something of our own to the community.

9 Q. Let me ask you to look at Defendants' Exhibit
10 119. Do you have it there, Sheila?

11 A. 119?

12 Q. Yeah.

13 A. I don't see 119. I see 113.

14 MR. GILLEN: Your Honor, may I approach?

15 THE COURT: You may.

16 MR. GILLEN: Thank you.

17 THE WITNESS: I still don't see a 119.

18 MR. GILLEN: Is that volume 2?

19 THE WITNESS: This starts with 171. Is it
20 upside down? Okay, it's upside down. Excuse me. Okay.
21 119. Yes.

22 BY MR. GILLEN:

23 Q. Do you recognize that document?

24 A. (Witness nodded head affirmatively.)

25 Q. Do you remember seeing this?

1 A. I'm thinking. Yeah, I think I did, yeah, uh-huh.

2 Q. What was your reaction to that document?

3 A. This is when the Discovery Institute, as I recall
4 this article, came out opposed to us.

5 Q. Did you agree with it?

6 A. No.

7 Q. Why was that?

8 A. I thought the Discovery Institute supported
9 intelligent design.

10 Q. Let me ask you about the placement of Pandas. Do
11 you know where the Pandas books were placed ultimately?

12 A. In the library.

13 Q. Do you believe that placing the books there is
14 consistent with the curriculum policy?

15 A. Yes.

16 Q. Why is that?

17 A. That's where I always thought they were going to
18 be.

19 Q. Excuse me?

20 A. That's where I thought they were always going to
21 be.

22 Q. We've had you look at a statement that was
23 drafted and passed on to you for your review. Did there
24 come a time when you learned that the teachers did not
25 read the statement?

1 A. Yes.

2 Q. And what was your reaction to that?

3 A. Upset, hurt. I guess, you know, disappointed.

4 Q. Why was that?

5 A. I guess I didn't understand why.

6 Q. Did you call for any action?

7 A. No.

8 Q. Why was that?

9 A. I think we were already sued, weren't we? I
10 believe we were.

11 Q. And did you see a connection between the
12 litigation here and whether any action should be taken
13 with respect to the teachers?

14 A. Action against the teachers? Is that what you
15 said?

16 Q. Yes.

17 A. No. Any action?

18 Q. Yes.

19 A. (Witness shook head negatively).

20 Q. Well, all I'm trying to do is, have you explain
21 for the record here in court why you did not call for
22 any action when the teachers didn't read the statement?

23 A. I guess I don't understand the action against --
24 I'm sorry, Pat. I'm not following your train of thought
25 here.

1 Q. Okay. Well, let's just -- I guess we can leave
2 it at that. Did you want any action to be taken against
3 the teachers?

4 A. No.

5 Q. Do you have an understanding concerning who
6 ultimately did read the statement to the students?

7 A. The administration.

8 Q. Let me ask you. When you voted for the
9 curriculum change on October 18th, 2004, did you
10 contemplate that the administrators would read the
11 statement?

12 A. No. I didn't contemplate when we passed the
13 motion there would be a statement.

14 Q. What did you have in mind?

15 A. Like I said before, that the teachers would just
16 say whatever they felt they needed to say.

17 Q. Okay. Let me ask you this. Did there come a
18 time when Dover Area School District put out a
19 newsletter relating to the curriculum change?

20 A. Yes.

21 Q. Okay. And do you know whose idea it was to put
22 that out?

23 A. No, I don't.

24 Q. Did you support sending it out?

25 A. Yes.

1 Q. And why?

2 A. I just thought it was good to give the community
3 more information.

4 Q. How about --

5 A. So they understood better what we were doing. I
6 think it was -- yeah.

7 Q. Okay. Let's talk about donations of other books.
8 Did there come a time when you became aware that other
9 books relating to the biology --

10 A. Yes.

11 Q. -- curriculum had been donated to the school
12 district?

13 A. Yes.

14 Q. And do you have an idea for when that happened?

15 A. In the spring sometime.

16 Q. And how did the books come to your attention?

17 A. Somebody told me they got an e-mail or something
18 at school, and they had arrived -- a box -- excuse me.
19 A box had arrived -- how was it. They got an e-mail,
20 and they didn't know -- let me think back exactly how it
21 was. I think the administration got an e-mail saying
22 they had a donation of books, and it was from a group
23 called Debunk Creation, and what they were going to do
24 with it, something like that.

25 Q. Okay. Did you review the books?

1 A. Yes, I did.

2 Q. And why did you do that?

3 A. I wanted to see what these books were that came
4 at our door step.

5 Q. And you referenced coming to your door step. Was
6 there something about the circumstances of their arrival
7 that you found unusual?

8 A. Well, they arrived, I guess, the secretary signed
9 them in, and nobody knew they were there even. Somebody
10 had to go hunt for them, I think it was.

11 Q. And I think you said you reviewed the texts?

12 A. Yes, I did.

13 Q. And did you approve placement -- or inclusion of
14 the texts in the library?

15 A. Yes.

16 Q. Why did you do that?

17 A. I thought that -- I like books. I thought, you
18 can give them information. If it's additional material,
19 good.

20 Q. Okay. Did there come a time when you learned
21 that Dr. Nilsen changed the statement that's read to
22 students?

23 A. Yes, I did.

24 Q. And do you know the nature of the change? Did it
25 relate to these books?

1 A. To say we had more books, I think it was.

2 Q. And do you believe that's consistent with the
3 board curriculum change adopted on October 18th, 2004?

4 A. I do.

5 Q. Why is that?

6 A. Because we support additional information. We
7 support teaching kids, you know, anything we can in
8 addition -- you know, give anything available we can
9 provide for them, that's what we want to do.

10 Q. Okay. Let me ask you. When you voted for the
11 curriculum change on October 18th, 2004, did you have a
12 religious purpose in doing so?

13 A. No, I did not.

14 Q. What was your purpose?

15 A. I just thought it was good to add additional
16 information. I thought, you know, we are -- we are a
17 standards driven school. But when kids walk across that
18 stage, you want them -- you want them to know how -- not
19 just what to think, but how to think. I thought, this
20 is another way to maybe make them think.

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

23 THE COURT: All right. Thank you, Mr.
24 Gillen. Cross by Mr. Schmidt.

25

CROSS EXAMINATION

1 BY MR. SCHMIDT:

2 Q. You need more water, Mrs. Harkins?

3 A. No, I don't. I'm good. Thank you. Nice to see
4 you again.

5 Q. You, too. I think you've testified in response
6 to Mr. Gillen a bit about your career on the school
7 board, but let me ask a few additional questions. As I
8 recall your testimony, you ran for reelection with a
9 ticket including three other members, including Alan
10 Bonsell, in 2001. And in the course of that election,
11 you became, in effect, a part of a majority on the
12 board, having been part of a minority before that. Did
13 I sum that up correctly?

14 A. Very well.

15 Q. In December 2004, you were elected president of
16 the board, isn't that right?

17 A. Yes, sir.

18 Q. And you conducted at least an informal campaign
19 for that position, didn't you? Didn't you solicit votes
20 from other board members for that position?

21 A. No, I didn't.

22 Q. Just sort of happened out of the blue?

23 A. No. What we did, we were taking turns. My turn
24 would have been before, but I never really wanted my
25 turn before. I wasn't, you know, seeking a turn. I had

1 more seniority than other board members, but I didn't
2 take a turn. And I now was available to take a turn.

3 Q. So you welcomed the opportunity to be president,
4 is that a fair statement?

5 A. That's a fair, I guess, yeah.

6 Q. Now as president of the board, you've done a
7 number of things that have some bearing on this
8 litigation, and I'd like just go over a few of them with
9 you?

10 A. Okay.

11 Q. One thing you've done, and I've noticed, you've
12 been here for nearly every day of the testimony, isn't
13 that right?

14 A. That is correct. I've tried.

15 Q. You've heard the witnesses testify about many of
16 the same subjects that you've testified about this
17 morning?

18 A. Yes, sir. Yes, sir.

19 Q. Second thing you did of pertinence is, as board
20 president, you appointed, if that's the right term, Alan
21 Bonsell to serve as the board's liaison or
22 representative in establishing a relationship with a
23 lawyer and eventually with the Thomas More Law Center?

24 A. That is correct.

25 Q. A third thing that you did involved the

1 publication of a newsletter for the Dover Area School
2 District that you just spoke about with Mr. Gillen,
3 isn't that right?

4 A. I didn't initiate it.

5 Q. Who initiated that, Mrs. Harkins?

6 A. I don't know. I would guess -- I don't remember
7 who brought it up and asked for the newsletter be sent
8 out. I don't remember that.

9 Q. Let me show you two exhibits.

10 A. Okay.

11 MR. SCHMIDT: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 THE WITNESS: Okay.

15 BY MR. SCHMIDT:

16 Q. I think you have already seen, so I won't burden
17 your table with it, Plaintiffs' 127, which is the
18 newsletter. Do you understand the newsletter I'm
19 referring to?

20 A. Well, okay, yes.

21 Q. The one that's up on the screen?

22 A. Uh-huh.

23 Q. Okay. Now the exhibit that I've handed you are
24 the minutes of a meeting in February of this year. Do
25 you see that?

1 A. Yes, sir.

2 Q. Look under number 1, communications?

3 A. Yes, that's presented by Mrs. Harkins, okay. I
4 didn't remember I presented that.

5 Q. And then look under number 2, board presidency?

6 A. That's what I was referring to, yes. Yes.

7 Q. It says there that this newsletter, as I
8 understand it, was presented by you at the meeting?

9 A. All right.

10 Q. And you were president of the board?

11 A. Yes, I was.

12 Q. You were aware of the efforts to prepare a
13 newsletter, is that right?

14 A. Yes.

15 Q. You knew somebody prepared it?

16 A. Yes, I did.

17 Q. Is it your testimony today that you don't know
18 who prepared it?

19 A. Why don't you ask the administration? They're up
20 next. I'm not sure. No, I don't.

21 Q. Did you agree with it?

22 A. Yes, I did.

23 Q. You approved sending it out?

24 A. Yes, I did.

25 Q. Okay. Now the fourth thing that you did that's

1 pertinent to this case, among a number of things, was
2 you testified on January 3rd --

3 A. Yes.

4 Q. -- as one of four representatives of the school
5 district in connection with the Plaintiffs' decision
6 whether or not to pursue a temporary restraining order,
7 isn't that right?

8 A. That is correct.

9 Q. And on January 2nd, in the evening, you, Mr.
10 Buckingham, Mr. Bonsell, Mr. Nilsen, and Mr. Baksa met
11 with the district's lawyers, Mr. Thompson and Mr.
12 Gillen, for several hours to prepare for those
13 depositions, isn't that right?

14 A. Two, less than two, I think it was.

15 Q. And that was a meeting that all of you
16 participated in at the same time?

17 A. That is correct.

18 Q. And you understood what the purpose of those
19 depositions was when you were preparing for them, isn't
20 that right? You knew that they were pursuant to an
21 order from Judge Jones to allow discovery prior to the
22 decision to pursue a temporary restraining order?

23 A. Okay, yes.

24 Q. You did know that, didn't you? And you were
25 deposed by Mr. Harvey, my colleague, who's been in

1 court?

2 A. Yes, that is correct.

3 Q. Now during that deposition, you reviewed a number
4 of press reports involving the district's consideration
5 of a biology textbook in June of 2004, isn't that right?

6 A. That is correct.

7 Q. Now I think I understand this, but let me confirm
8 it. You take the York Daily Record at home?

9 A. That is correct.

10 Q. You read it every day?

11 A. No, that is not correct. I get it every day. I
12 read it from walking -- carrying it into my husband, so
13 that would be, you know, then I might glance through it.
14 Some days, I don't read it. Some days, I do. When I
15 say, you know -- you know, so, no.

16 Q. Fair enough.

17 A. Is that okay?

18 Q. That's fine. That's fine. Prior to the
19 deposition on January 3rd, you were aware that there had
20 been extensive coverage of the board's meetings in June
21 of 2004 and the discussions of the biology textbook?

22 A. Yes, I was.

23 Q. Now you've said today that you thought some of
24 the board's activities had been misreported,
25 particularly by Mr. Maldonado?

1 A. There were strained relations.

2 Q. The strained relations, as I recall your
3 testimony a few minutes ago, was because board meetings
4 had been misrepresented by Mr. Maldonado and his
5 articles that appeared in the York Daily Record, right?

6 A. No, that's not true. These strained relations
7 happened before we were elected on the board even with
8 the building project.

9 THE COURT: I'm having trouble hearing, you
10 and I'm sure the court reporter is, too.

11 THE WITNESS: I'm sorry. I'm thinking with
12 my eyes closed. I'm sorry.

13 BY MR. SCHMIDT:

14 Q. I think you testified a few minutes ago that the
15 strained relations arose from how the building issue was
16 reported in the paper, and that involved events reaching
17 all the way back to your run for reelection in '01,
18 isn't that right?

19 A. That's correct.

20 Q. And I think you said, as I recall your testimony,
21 that there was some misreporting or mischaracterization
22 of the board's debate of the under God issue when a
23 resolution was being considered to support the position
24 of a party in a Supreme Court case?

25 A. That's correct.

1 Q. Now there weren't any other problems you had with
2 Mr. Maldonado's reporting in the York Daily Record, were
3 there, just those two?

4 A. I don't remember. There were other issues, but I
5 can't give you any particulars. The relationships were
6 strained.

7 Q. I'm trying to get at not whether the relations
8 were strained, but whether you are able to identify any
9 other issues that you thought involved misreporting in
10 the York Daily Record. As I understand your testimony,
11 Mrs. Harkins, the only issues involved the building
12 project and the board's debate of whether or not to
13 adopt a resolution to support the use of under God in
14 the pledge of allegiance. Am I right about that?

15 A. No. There were several other ones. I know there
16 was an issue -- I'm thinking back. Misreporting. Angie
17 Yingling had issues, and there was some misreporting
18 then. And I can't tell you what they all were. I'm
19 sorry.

20 Q. That's all right. Let me ask you a follow-up
21 question on that subject.

22 A. Okay.

23 Q. As I recall your deposition testimony, and I'm
24 happy to show you the transcript --

25 A. Okay.

1 Q. -- but this may shorten it up.

2 A. Okay.

3 Q. The third subject is the one you just mentioned,
4 which was some reporting of comments by or about Angie
5 Yingling that you took exception to?

6 A. Yes.

7 Q. Isn't that right?

8 A. Something like that. I don't know.

9 Q. Okay. But at the time of your deposition, you
10 did not identify any misreporting by the paper of the
11 board's debate at the June meetings when the subject of
12 the biology text was discussed, did you?

13 A. I probably couldn't think of anything.

14 Q. Now your testimony this morning is that, when the
15 board was considering a biology book in June of '04,
16 your view was that the books then in use looked new and
17 that you didn't believe it was necessary to buy new
18 books or newer books, is that right? That was your
19 principal concern?

20 A. Yes, pretty much, yeah.

21 Q. That wasn't the concern that was expressed by
22 everybody else on the board though, was it?

23 A. Oh, not at all, no.

24 Q. In fact, Mr. Buckingham thought the problem with
25 the book was that it was laced with Darwinism?

1 A. You better believe it.

2 Q. Some people on the board wanted to find a book
3 that balanced the teaching of creationism and evolution,
4 didn't they?

5 A. I don't remember that.

6 Q. You remembered that there was no such discussion?

7 A. I don't remember that, no.

8 Q. One way or the other?

9 A. Huh-uh.

10 Q. Okay.

11 A. Correct.

12 Q. Now during the deposition that was taken, I think
13 you were asked about some other statements by Mr.
14 Buckingham?

15 A. Such as?

16 Q. Bear with me one minute.

17 A. Okay.

18 MR. SCHMIDT: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 BY MR. SCHMIDT:

22 Q. Do you see that?

23 A. Uh-huh, yes, sir.

24 Q. If you would look down at P-53. Sorry, Matt.
25 Seventh paragraph. It starts, 2000 years ago, someone

1 died on a cross?

2 A. Yes, that is correct.

3 Q. Do you see that?

4 A. Yes, sir.

5 Q. Is it your testimony today that this statement
6 was not made at the June 14th board meeting by Mr.
7 Buckingham?

8 A. That's my testimony, that I never heard him say
9 it there. I heard him say, I think, I believe, I should
10 say, I believe I heard him say the one above that, but I
11 don't remember the 2000 one, no.

12 Q. The one above that, you're referring to the
13 paragraph that refers to a generation that prayed and
14 read from the Bible during school?

15 A. No, the one above that, the liberals in black
16 robes.

17 Q. Okay. Do you recall him saying that?

18 A. Something -- I remember something to that effect,
19 I think.

20 Q. It's come up with other witnesses, Mrs. Harkins,
21 and I want to be clear about that question.

22 A. I'm sorry.

23 Q. That's quite all right. You're doing fine. This
24 article says that Mr. Buckingham said, 2000 years ago,
25 someone died on a cross?

1 A. Right, correct.

2 Q. Is it your testimony today that he did not say
3 those words at the June 14th --

4 A. I cannot say.

5 Q. Wait for me -- that he did not say those words on
6 June 14th?

7 A. I didn't hear him. I didn't hear him say those
8 words. I don't have any recollection of it. I don't.

9 Q. In fact, you have a clear recollection that he
10 said those words in November of 2003, isn't that right?

11 A. He jumped down my throat.

12 Q. Is that why you recall him saying it in November
13 2003?

14 A. Right, because he -- I mean, he bit my head off.

15 Q. Now is it possible that he said those words on
16 June 14th, 2004?

17 A. I could have been coughing.

18 Q. Say that again. I missed that.

19 A. I could have been coughing.

20 Q. Turn the page, if you would. P-53. Please look
21 at the fourth paragraph down.

22 A. Which one?

23 Q. Fourth down. Starts with the word also. Do you
24 see that?

25 A. Yes, sir.

1 Q. You recall Mrs. Buckingham saying those words at
2 the board meeting on the 14th?

3 A. Since I've been sitting in court, I do, but I did
4 not remember that at all when I gave my first
5 deposition. I know I didn't.

6 Q. But you remember it now?

7 A. Yes, sir.

8 Q. Do you remember saying at your first deposition
9 emphatically that she didn't say that?

10 A. I didn't remember that at all, you're right. I
11 did not. Because I thought she only got up and, quote,
12 unquote, preached once. But maybe she preached twice.
13 I don't know. Or maybe this was the only time.

14 Q. I want to be clear about what you're saying now,
15 Mrs. Harkins. Is it your testimony that you didn't
16 remember this before, but you remember it now?

17 A. Since I sit in here, yes, that's correct.

18 Q. And isn't it true, at your deposition, in fact,
19 you said emphatically that she made this statement in
20 November of '03?

21 A. I thought that's when she made it, that is
22 correct.

23 Q. Well, for the moment, you've saved me a trip up
24 to the witness stand. Let me ask you some questions
25 about Pandas.

1 A. Yes, sir.

2 Q. You got the Pandas book from either Mr. Baksa or
3 Mr. Nilsen sometime in the summer of 2004, correct?

4 A. That's correct. Mike.

5 Q. You had it for a very brief time, and you gave it
6 to Jeff Brown?

7 A. That is correct.

8 Q. I think you said you had it for about an hour or
9 two, is that right?

10 A. That's correct. That's all I had it for, that's
11 correct.

12 Q. And you glanced through it?

13 A. That is correct.

14 Q. Did you study it?

15 A. No.

16 Q. Do you remember what parts you read?

17 A. No.

18 Q. How did you reach the conclusion that it was
19 science and that it didn't have anything to do with
20 creationism, Mrs. Harkins, if you only looked at it for
21 an hour?

22 A. That was my opinion after looking at it for an
23 hour.

24 Q. And that remains your opinion today, and it
25 remains so based on just that hour's review of the book,

1 isn't that right?

2 A. Yeah, there are things in there I don't like that
3 I've seen since, but, yes. It looks okay for the
4 library.

5 Q. Looked okay to add to the curriculum, isn't that
6 what you mean to say?

7 A. I don't see a problem with that. But we have the
8 other books added, too, to the curriculum.

9 Q. Jeff Brown told you that it offended him because
10 he thought it was religious in nature, didn't he?

11 A. I'm trying to think what exactly -- he looked at
12 the book as -- I think he said it offended his religion.

13 Q. It offended his religion on religious grounds,
14 didn't it?

15 A. Yeah, I would say so, yes.

16 Q. And Jeff Brown also told you that he thought it
17 was surprising that you would be willing to spend about
18 \$4400.00 to buy Of Pandas because of your fiscal
19 conservatism?

20 A. I never said I was willing to spend \$4400.00,
21 never.

22 Q. You knew that was how much it was going to cost
23 to buy the 220 books?

24 A. I never said we were going to buy the 220 books.

25 Q. You knew Mr. Buckingham proposed that the

1 district acquire Of Pandas and People and make it a
2 companion text with the biology book, didn't you?

3 A. I remember something to that effect.

4 Q. That, in fact, was the subject of the debate at
5 the board meeting on August 2nd, wasn't it? Do you
6 recall that, Mrs. Harkins?

7 A. I remember the debate, but I don't remember that
8 -- it may have been said -- that was a huge
9 multi-faceted, if you will, debate.

10 Q. Wasn't the essence of Mr. Buckingham's position
11 on August 2nd that he wanted the district to have Of
12 Pandas and People be a companion text with the Miller
13 and Levine biology text?

14 A. I believe you're right, yes.

15 Q. Isn't it true that Mr. Buckingham advised the
16 board and the school's administration that he could
17 acquire, or the district could acquire, the 220 volumes
18 that would be needed for \$4400.00?

19 A. I don't remember the cost, but I remember -- I
20 think you're right, that he did propose something of
21 acquiring them, yes.

22 MR. SCHMIDT: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 BY MR. SCHMIDT:

1 Q. I'm showing you Exhibit 65.

2 A. Okay.

3 Q. Take a minute to look at it.

4 A. Okay.

5 Q. That's a memorandum from Mr. Buckingham --

6 A. Okay.

7 Q. -- involving his position that Of Pandas should
8 be purchased as a companion text, isn't that right?

9 A. It appears so, yes.

10 Q. And it does say that the cost to the district
11 afforded by the distributor would be \$4391.20, plus
12 shipping, right?

13 A. Yes, that is correct.

14 Q. And isn't it true that Mr. Brown was surprised
15 and expressed his surprise to you that you would be
16 willing to spend that money given some of the budget
17 cuts that the board had authorized or was considering?

18 A. I don't remember him ever saying that, no, I
19 don't.

20 Q. Isn't it true that around the time that this
21 issue came up, you had cut the library budget at Dover
22 High School?

23 A. No, we increased the library budget.

24 Q. Isn't it true you were considering charging
25 volunteers in the school district a \$10.00 fee to defray

1 the security checks that had to be performed?

2 A. No, that's not true. We've charged the people, I
3 think, for two years -- ever since we initiated -- the
4 state passed a law that you have to have checks on all
5 your volunteers. And from that time, we've -- they've
6 had to pay for their checks. I think it's \$10.00.

7 Q. So there is a fee that the board requires, is
8 that right?

9 A. But it was long before any of this.

10 Q. Okay.

11 A. Long, long.

12 Q. Let me take you forward in the summer of 2004.

13 A. Okay.

14 Q. You've had the book. You've passed it on to Mr.
15 Brown. And the meeting on August the 2nd includes the
16 debate that we just touched on, which is whether or not
17 to purchase the biology book with Pandas as a companion
18 book, correct?

19 A. Correct.

20 Q. You recall that discussion?

21 A. That's correct.

22 Q. It's your testimony this morning that you decided
23 to vote against purchasing the book because it was too
24 expensive?

25 A. Yes -- well, we were short on money. We bought

1 the family consumer science book.

2 Q. And, in fact, the money you said you were short
3 was almost exactly the amount of money that it would
4 have taken to purchase the book Of Pandas and People,
5 according to Mr. Buckingham's memo, isn't that right?
6 Didn't you say that you were \$5000.00 short?

7 A. It was something like that, that we were short in
8 the budget. No, that was what the biology books would
9 have cost, we were short.

10 Q. I think your testimony this morning was, I just
11 want to be clear about it, is that the biology textbook
12 was an expense you didn't want the district to incur,
13 and that the district, I think you said, was \$5000.00
14 short in the textbook fund for that year?

15 A. That was my recollection, that's correct.

16 Q. And I think you said that the kids --

17 A. I think that's what the family consumer science
18 books cost, if you look.

19 Q. I'm only asking you this, whether you thought the
20 fund was short \$5000.00?

21 A. That was my recollection.

22 Q. And the kids were just going to have to wait
23 another year?

24 A. Those books were like brand new.

25 Q. Now it's true, isn't it, Mrs. Harkins, that you

1 had already heard from the teachers on more than one
2 occasion that the then current biology book didn't fit
3 the curriculum?

4 A. That is correct.

5 Q. And you said today, and you've said before, that
6 Dover is a standards driven district?

7 A. That is correct.

8 Q. And isn't it true that Dover had to adopt its
9 curriculum to teach biology to conform to the
10 Pennsylvania standards for teaching biology in public
11 schools?

12 A. That is correct.

13 Q. And you had a '98 book?

14 A. That's correct.

15 Q. And the standards came out and the curriculum was
16 modified to meet the standards several years after that
17 book was published, right?

18 A. Yes, but they didn't use that book from before.

19 Q. Okay. And isn't it true that the reason they
20 didn't use the book, to use your description, is because
21 they had too many students who needed access to the
22 books, so it was kept in the classroom rather than
23 distributed to each student?

24 A. No, that's not true. Bert said, when they got
25 the book back, it would have been '98, when they got the

1 book, that they had only reviewed one chapter of it.
2 When they got the book, they realized, in that period,
3 that it didn't fit the curriculum.

4 Q. Isn't it true that in the spring of 2004, the
5 biology teachers provided a multi-point response to the
6 question why they needed a new science textbook?

7 A. When was this?

8 Q. In the spring of 2004.

9 A. I don't remember.

10 Q. Do you recall that?

11 A. No. Refresh my memory. I'm sorry. I do not
12 remember that.

13 Q. If you don't recall it, you don't recall it.

14 A. No, I don't.

15 Q. I want to go back to my question about the
16 curriculum, because you have expressed your testimony
17 about the cost of the book?

18 A. That's correct.

19 Q. I want to be sure I understand that you knew at
20 the time that the books didn't match the curriculum that
21 had been adopted three or four years after the book was
22 purchased by the district?

23 A. Then they were teaching the curriculum fine
24 without -- with the information they were using, the
25 supplemental information.

1 Q. So you made a judgment that the teaching was
2 going just fine despite the fact that the teachers told
3 you they needed the new book, is that your position?

4 A. That's pretty fair to say.

5 Q. I want to move on to the change in the
6 curriculum.

7 A. Okay.

8 Q. Do you have the exhibits that Mr. Gillen gave you
9 still up there?

10 A. Which one would you like? Which book?

11 Q. I'll point you through it. Just hang on to the
12 book. It's the exhibits that started with 44.

13 MR. SCHMIDT: Bear with me a moment, Your
14 Honor.

15 THE COURT: That's fine.

16 BY MR. SCHMIDT:

17 Q. I think you have a chart.

18 A. Okay.

19 Q. Plaintiffs' Exhibit 149. Do you have that in
20 front of you still? I'll hand you mine.

21 A. Yes, sir. Yes.

22 Q. You have it?

23 A. Uh-huh.

24 Q. Your testimony this morning was that you gave
25 that document to Casey Brown?

1 A. What was -- the other side is what I was focusing
2 on. We really didn't focus on this side.

3 Q. Page 2?

4 A. No, only that side did we discuss.

5 Q. You recognize page 1?

6 A. That's the side we discussed, correct.

7 Q. Turn to page 1.

8 A. Uh-huh.

9 Q. Page 1 of 149.

10 A. Uh-huh.

11 Q. You've seen that one before?

12 A. Yes, that's the opposite side.

13 Q. You gave both sides of this piece of paper to
14 Casey Brown, didn't you?

15 A. That is correct.

16 Q. You were here for her testimony, weren't you?

17 A. Yes, I was.

18 MR. SCHMIDT: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 BY MR. SCHMIDT:

22 Q. I'm showing you what has been marked as
23 Plaintiffs' Exhibit 660, and ask you to turn two or
24 three pages in, and ask if you recognize those as the
25 same document that shows up as P-129?

1 A. Yes, sir.

2 Q. Now turn back to the first page of that exhibit.

3 A. Okay.

4 Q. Do you see that handwriting in the top corner?

5 A. Yes, sir.

6 Q. What's the date there?

7 A. August 27th.

8 Q. And you recall Mrs. Brown testifying that she got
9 these documents --

10 A. Yes.

11 Q. -- on August 27th?

12 A. I believe that Casey might have got that document
13 on August 27th. But I think maybe this was not in the
14 same pile. I gave her this one. I believe she may have
15 got that one then.

16 Q. Isn't it true that you attended a curriculum
17 committee meeting with Mrs. Brown on August 27, 2004?

18 A. I was at a curriculum committee meeting August
19 27th. I'm thinking if Casey was there or not.

20 Q. I think her testimony was, she was.

21 A. Okay.

22 Q. That's when she got those documents?

23 A. Well, does anyone else that was at the meeting
24 have that document?

25 MR. GILLEN: I just want to object for the

1 record to the clarification. I know you're trying to
2 date it, Tom.

3 MR. SCHMIDT: That's all right.

4 THE COURT: Hold it. Wait a minute. What's
5 the objection?

6 MR. GILLEN: The objection is, there's a
7 question here about the dating of this document and
8 receipt by Casey Brown. I do not -- the witness has
9 testified she gave it to her in the spring.

10 THE WITNESS: I thought it was around June.

11 THE COURT: Wait, ma'am. Hold it. Don't
12 talk while he's talking.

13 MR. GILLEN: And the document that was
14 flipped up there, the version of the chart that's up
15 there has spring of 2004 on it.

16 THE COURT: I'm just wondering, what's your
17 objection?

18 MR. GILLEN: My objection is to the
19 characterization of the witness's testimony.

20 MR. SCHMIDT: I think --

21 THE COURT: He's got her on cross.

22 THE WITNESS: No, he can ask me.

23 THE COURT: I think it was fair cross.

24 So --

25 MR. GILLEN: Then let me withdraw the

1 objection for now, Your Honor.

2 THE COURT: Did you have an unanswered
3 question?

4 MR. SCHMIDT: I was going to ask one that
5 might fill in the concern that Mr. Gillen raised with
6 his objection.

7 THE COURT: So I'll consider that the
8 objection has been mooted, and I'll allow you to ask the
9 -- at least the objection to the prior question, and
10 allow you to ask a new question. Try it that way.

11 BY MR. SCHMIDT:

12 Q. We have Mrs. Brown testifying that she got the
13 document on August 27th?

14 A. Okay.

15 Q. We have your testimony that you gave Mrs. Brown
16 the document?

17 A. Yes.

18 Q. You understand that?

19 A. That is correct.

20 Q. Okay. We've looked at P-149, which has
21 handwriting in the top right corner?

22 A. Where's P-149?

23 Q. I can show it to you.

24 A. Okay.

25 Q. Let me bring it up.

1 MR. SCHMIDT: If I may approach the witness,
2 Your Honor?

3 THE COURT: You may. It's on the screen
4 also, I note.

5 THE WITNESS: Given to me by Baksa. Okay.

6 BY MR. SCHMIDT:

7 Q. I think we have testimony that, that's Jen
8 Miller's handwriting and her notation of when she got
9 the document?

10 A. Okay.

11 Q. Is it possible that you got the document at the
12 same meeting that Jen Miller did and got it from Mike
13 Baksa in the spring of 2004?

14 A. I don't know that. I thought I got it from a
15 private person, but I can't swear that.

16 Q. Is it possible that you got it from a private
17 person and gave it to Mike Baksa in the spring of 2004?

18 A. That is possible, too. That is very possible.

19 Q. It's also possible that you gave that document to
20 Casey Brown in August of 2004, isn't it?

21 A. I thought I gave it to her earlier, but --

22 Q. You don't remember, do you?

23 A. I thought I -- my recollection was, it was around
24 -- when we first started talking intelligent design,
25 which was around June. That's how I placed it.

1 Q. Back to the curriculum change, if I could?

2 A. Okay.

3 Q. You've testified about the October 18th meeting.
4 I need to ask you about the October 4th meeting, which
5 was the planning meeting for the board, is that correct?

6 A. Right. I'm trying -- it's not coming up in my
7 mind. Help me.

8 Q. Isn't it true that the board has two meetings
9 every month?

10 A. Yes, sir.

11 Q. Except sometimes in the summer?

12 A. That is correct.

13 Q. And while we're on that subject, isn't it true
14 that the board only had one meeting in July in 2004,
15 July the 12th, because July 5th was the date adjacent to
16 the holiday?

17 A. I don't remember, but I take your word.

18 Q. Okay. Back to July -- I'm sorry, back to October
19 4th.

20 A. Okay.

21 Q. There was no discussion of the proposed
22 curriculum change at the October 4th meeting, was there?

23 A. I don't remember any.

24 Q. Yet you were aware that there was a curriculum
25 change under consideration, weren't you?

1 A. We had been talking about one for sometime, yes.

2 Q. You knew on October 4th that Noel Weinrich and
3 Jane Cleaver were resigning from the board, didn't you?

4 A. I knew when?

5 Q. October 4th.

6 A. I don't recall that I knew that.

7 Q. Okay. Didn't Jane Cleaver announce her
8 resignation at the October 4th meeting?

9 A. I don't remember that.

10 Q. You knew that she purchased a house in Florida,
11 didn't you?

12 A. Yes, I did.

13 Q. You knew that Mr. Weinrich was going to resign
14 from the board, didn't you?

15 A. I knew Mr. Weinrich was going to be leaving, yes.

16 Q. You knew both of those people had announced their
17 departure before the October 18th meeting rolled around,
18 isn't that true?

19 A. I think they did. I think you're right.

20 Q. In fact, you knew that before the October 4th
21 meeting rolled around?

22 A. I don't know that. I can't dispute that.

23 Q. Okay. Before the meeting on October the 18th,
24 there was a meeting of the board curriculum committee to
25 discuss the curriculum change?

1 A. Yes, sir.

2 Q. Isn't that right?

3 A. Yes, sir.

4 Q. If you would pull up the exhibits that Mr. Gillen
5 identified, I'm going to ask you a few questions about
6 them.

7 A. Okay.

8 Q. I'll walk you through them with my questions?

9 A. Yes, sir.

10 Q. Defendants' Exhibit 44. Do you have that in
11 front of you?

12 A. Yes.

13 Q. That is the faculty and administration proposal,
14 correct?

15 A. Correct. Yes, sir.

16 Q. It doesn't mention intelligent design?

17 A. That is correct.

18 Q. It doesn't mention Pandas?

19 A. Correct.

20 Q. Correct?

21 A. That is correct.

22 Q. Let's keep the dates straight. That's September
23 21, 2004?

24 A. Okay.

25 Q. One week later, Mr. Baksa sends just the board

1 members who are on the curriculum committee, including
2 Mr. Bonsell, who's ex-officio, a memo that asks for a
3 meeting on October 7th, is that right?

4 A. Which one is that?

5 Q. I'm sorry. Exhibit 46. I just called out.

6 A. Okay.

7 Q. No faculty was invited to that meeting, were
8 they?

9 A. No.

10 Q. And it was at that meeting that the decision was
11 made by the four board members to add intelligent design
12 to the curriculum?

13 A. That is correct.

14 Q. At that point, your familiarity with the concept
15 of intelligent design was limited to whatever you saw in
16 an hour's glance through Pandas and some Googling on the
17 Internet, correct?

18 A. Pretty much, yes, sir.

19 Q. And I think your testimony today is consistent
20 with your deposition, which is that, there was a
21 reference to other theories and the only one anybody
22 could identify was intelligent design?

23 A. That's correct.

24 Q. You didn't know what intelligent design really
25 meant at that time, did you?

1 A. I still don't have -- I listened to many experts,
2 and I still don't have a firm explanation.

3 Q. Having had that meeting with the board members --

4 A. Yes, sir.

5 Q. -- when it came time to have the board meeting on
6 the 18th, you still couldn't get that position out of
7 the faculty or the administrative staff, could you?
8 They still didn't want to include intelligent design in
9 the curriculum change, did they?

10 A. That's correct.

11 Q. Then there was the compromise, which appears
12 behind Exhibit 68. Do you see that?

13 A. Yes, sir.

14 Q. That was proposed, metaphorically speaking, at
15 the 11th hour, right before the meeting, isn't that
16 right?

17 A. No, sir, it was, I think, done during the
18 meeting.

19 Q. Well, if you look at the exhibit?

20 A. That's what I thought.

21 Q. I don't mean to jump you around, but if you look
22 at the exhibit, there's a memorandum from Mike Baksa to
23 the board dated October the 18th, correct?

24 A. Oh, okay. I thought that's the one we did at the
25 meeting.

1 Q. Did you see where I'm looking?

2 A. Yes.

3 Q. Okay. This is a compromise proposed by the
4 faculty and administration for consideration at the
5 meeting, isn't that right?

6 A. Yes, that is correct, yes. I was ahead of
7 myself.

8 Q. Still no reference to intelligent design?

9 A. That is correct.

10 Q. But an inclusion of a reference to Pandas?

11 A. That is correct.

12 Q. And you understood it was a compromise, didn't
13 you?

14 A. I understood that this was what the
15 administration staff was presenting. I can't say that I
16 understood a compromise.

17 Q. It was something that they were prepared to live
18 with since the members of the curriculum committee
19 wanted intelligent design. Isn't that your
20 understanding of happened on the 18th?

21 A. Run that by me again.

22 Q. I'll try it a different way, okay?

23 A. Okay.

24 Q. When you come to the meeting on October the 18th,
25 you heard Mrs. Spahr make a presentation about why

1 intelligent design should not be included in the
2 curriculum, isn't that right?

3 A. Correct.

4 Q. She thought that it might be illegal?

5 A. That's correct.

6 Q. She thought it was not good science?

7 A. Correct.

8 Q. She thought it meant the teachers would be
9 required to teach creationism?

10 A. That's correct.

11 Q. And Mrs. Spahr and Jen Miller were the only
12 people with any special scientific training or education
13 who spoke to that issue for the board?

14 A. That's correct.

15 Q. You didn't have the background to evaluate what
16 they said or disbelieve it, did you?

17 A. That's correct.

18 MR. SCHMIDT: One moment, Your Honor.

19 THE COURT: That's fine.

20 BY MR. SCHMIDT:

21 Q. I think you testified this morning that you
22 couldn't see the point to what Mr. Weinrich was trying
23 to accomplish?

24 A. I didn't, yeah.

25 Q. Okay. And I think you said that you didn't see

1 that it was a particularly big deal to add the phrase
2 intelligent design to the curriculum?

3 A. I was -- I would say, I was one of the proponents
4 of adding it for the reason I wanted something added. I
5 didn't want it just to say, other theories. I felt you
6 had to have an example.

7 Q. Okay. I understand what your testimony was. But
8 the teachers said it was a bad idea to include a
9 reference to intelligent design, isn't that true?

10 A. Well, they said they thought they were teaching
11 it. We said they weren't teaching it.

12 Q. We'll get to that in a moment.

13 A. Okay.

14 Q. The teachers spoke against the inclusion of a
15 reference to intelligent design, isn't that true?

16 A. That is true.

17 Q. And your testimony today was that you didn't
18 think it was particularly significant to include a
19 reference to intelligent design, isn't that right?

20 A. I didn't think it was particularly -- I don't
21 understand.

22 Q. I thought that's what you said.

23 A. No. Excuse me.

24 Q. I think your testimony was that you didn't think
25 adding the words intelligent design made a very big

1 difference?

2 A. Not if you're only making them aware, that's
3 correct.

4 Q. The teachers thought it made a big difference
5 though, didn't they?

6 A. Only because they thought they were teaching it.

7 Q. So you thought the solution was, if they didn't
8 have to teach it, then it didn't really matter, is that
9 right?

10 A. That's why, if you want to call it, the 11th
11 hour, Alan suggested we add the note, origins of life is
12 not taught. That addressed that issue.

13 Q. Mr. Gillen, in his opening, referred to this
14 curriculum change, and I wrote his words down, as a
15 modest change to the biology curriculum for the purpose
16 of enhancing science education, end quote. Do you
17 recall that statement?

18 A. Yes, sir. I believe you. How's that? I don't
19 know I recollect those exact words, but I believe you.

20 Q. The biology teachers thought it made a
21 difference. The administration didn't support the
22 proposal in several go arounds before the meeting. Am I
23 right about that, Mrs. Harkins?

24 A. The teaching of it.

25 Q. The inclusion of a reference to it?

1 A. Excuse me?

2 Q. The inclusion of a reference to intelligent
3 design was something that the teachers vigorously
4 opposed at the meeting on October 18th, isn't that true?

5 A. But that was teaching of it. They always said,
6 teaching.

7 Q. After the curriculum was adopted, the
8 administration prepared the four paragraph statement
9 that you testified about?

10 A. Yes, sir.

11 Q. I think, if you look at Exhibit 65, do you see
12 that?

13 A. Yes, sir.

14 Q. I think you testified this morning that when you
15 agreed to the curriculum change, you didn't think there
16 would be a need for such a statement?

17 A. Correct.

18 Q. That's because you thought the teachers could
19 handle the curriculum change in the classroom, isn't
20 that right?

21 A. That is correct.

22 Q. And teachers teach, don't they?

23 A. Well, I've heard Bert Spahr say she mentions
24 things that she's not teaching. She's only making
25 students aware of.

1 Q. Teachers do teach though, don't they?

2 A. They do teach.

3 Q. And the teachers on October 18th expressed
4 concern about teaching intelligent design?

5 A. That is correct.

6 Q. So the curriculum that was adopted, in your view,
7 involved something the teachers would have to handle in
8 the classroom just like they handle all the other parts
9 of the curriculum, isn't that right?

10 A. They handle a lot of things that aren't teaching
11 though also. They do cafeteria count. They take
12 attendance. Is that teaching?

13 Q. I don't think so. Do you?

14 A. No.

15 Q. But when they're making somebody aware of
16 something, they're teaching them about it, aren't they?

17 A. I don't consider it, no.

18 Q. In any event, you felt it was necessary, as the
19 board, to establish a regime for handling the curriculum
20 change to make it explicit that the teachers were not to
21 teach intelligent design, is that right? Isn't that
22 eventually what happened?

23 A. Put that in smaller words.

24 Q. Sure. Happy to, and I apologize for not doing
25 it. After the board adopted the curriculum change, the

1 board and the administration established a policy that
2 explicitly said teachers were not teaching, I'll put
3 that word in quotes, intelligent design, is that your
4 position?

5 A. That is correct.

6 Q. Now, in fact, the policy said that, if a student
7 asked a teacher about intelligent design, the teacher
8 was supposed to decline to answer the question, right?

9 A. Yes, but that only happened after we were sued.

10 Q. Well, wasn't that the district's plan from the
11 beginning? Isn't that your testimony?

12 A. A teacher, I think, can handle something however
13 they see fit.

14 Q. Is the teacher free, Mrs. Harkins, to teach
15 intelligent design?

16 A. We never -- no, that was never planned. That was
17 only to make aware of, that is correct.

18 MR. SCHMIDT: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. SCHMIDT:

21 Q. Mrs. Harkins, I've put in front of you a copy of
22 the transcript of your deposition.

23 A. Yes, sir.

24 Q. Taken January 3rd?

25 A. Okay.

1 Q. I may ask you to refer to that. A teacher is not
2 permitted to respond to questions about intelligent
3 design in the Dover School District?

4 A. That is correct.

5 Q. Back on October the 18th, if a teacher had asked
6 you a question about intelligent design, you wouldn't
7 have been able to answer it, would you?

8 A. That is correct.

9 Q. You didn't really know anything about intelligent
10 design, except that the two words existed side-by-side,
11 isn't that right?

12 A. No, that's not true, huh-uh. I knew a little
13 bit, but I still don't know enough that I could ever
14 teach it, no. I know very little still.

15 Q. Isn't it true that you didn't have a way to
16 define or describe intelligent design?

17 A. I still don't today.

18 Q. And yet you're prepared to make that part of the
19 curriculum at Dover Area School District, isn't that
20 right?

21 A. And I think I've always said, you make them aware
22 of it. They find out for themselves.

23 Q. When you adopted the curriculum change in October
24 of 2004, you knew it was controversial; you knew it was
25 viewed as bad science and teaching creationism, at least

1 by those who were in charge of dealing with it in the
2 classroom; you knew that at least one person whose
3 judgment you trusted on the board, Jeff Brown, was
4 troubled by the contents of it; and that you didn't
5 understand what it really involved; and yet you voted to
6 add it to the curriculum?

7 A. Right. I didn't see it as creationism. I saw it
8 as science, correct. And Jeff and I did have lengthy
9 conversations on it.

10 Q. And your view of it as science is based on, as
11 you put it, an hour's glance through Of Pandas and a
12 little Googling, right?

13 A. That's fairly close, yes.

14 Q. And then in the following year, in February, when
15 you sent out the newsletter that I think is P-127, you
16 approved the statement that ID is a scientific theory,
17 even though you really didn't have any basis on which to
18 make that decision?

19 A. Only from what I had read, right. I had read
20 different scientists on Googling supported it, credible
21 scientists.

22 Q. The last thing to ask you, Mrs. Harkins, is, at
23 the October meeting when you made the momentous decision
24 to include intelligent design, you didn't offer any
25 explanation to the teachers or those in attendance at

1 that meeting about how this was going to enhance
2 scientific education in Dover, did you?

3 A. I don't recall that that was ever discussed.

4 Q. Certainly wasn't discussed by the board, was it?

5 A. I don't think it was ever brought up.

6 MR. SCHMIDT: That's all I have, Your Honor.

7 THE COURT: All right. Thank you, Mr.

8 Schmidt. Redirect, if any, by Mr. Gillen.

9 MR. GILLEN: Thank you, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. GILLEN:

12 Q. I'm going to be brief, but I have a few questions
13 for you. Mr. Schmidt directed your attention to
14 Plaintiffs' Exhibit 53.

15 A. 53. Is that in one of the books?

16 Q. It's a newspaper article dated June 15th, 2004.

17 A. 53?

18 Q. It's not in one of our books.

19 A. I'm sorry.

20 Q. I believe Mr. Schmidt provided you with a copy
21 when he questioned you about it.

22 A. Is this the one that says, P01328 in the bottom?

23 Q. You know, as a matter of fact, Sheila, I
24 apologize. I've misidentified it. I'm talking about
25 or want to question you about Plaintiffs' Exhibit 53.

1 A. First page?

2 Q. The first page.

3 A. Yes, sir. I was doing so good for a while. I'm
4 sorry, Pat, yes.

5 Q. That's all right. I won't keep you long. If you
6 look at the one, two, three, four, five, six, seventh
7 paragraph down, you'll see that, after Bill Buckingham's
8 now familiar comments about the text being laced with
9 Darwinism, the paragraph continues?

10 A. Excuse me. I'm not with you yet.

11 Q. If you would go down to the seventh paragraph of
12 this article dated June 15, 2004?

13 A. What does the paragraph begin with?

14 Q. It begins with, last week.

15 A. Okay, yes.

16 Q. That paragraph begins with the statement, laced
17 with Darwinism, and then continues. This week, he said,
18 a Seattle based think tank gave the book Biology by
19 Miller and Levine an F grade. Do you remember Mr.
20 Buckingham saying anything about a Seattle based think
21 tank?

22 A. No.

23 Q. Do you recall him saying that the Miller and
24 Levine text had been given an F by a Seattle based think
25 tank?

1 A. No.

2 Q. All right. You've been asked questions about
3 your vote on August 2nd, 2004, with respect to approval
4 of the biology text. And I want to make sure the record
5 is clear on this. Were you voting to approve the
6 purchase of Pandas when you voted in August?

7 A. No.

8 Q. Why did you cast your vote in that initial vote
9 in the same way that Mr. Buckingham did?

10 A. Sorry, Pat. I don't understand.

11 Q. The vote came up for approval of the text. Do
12 you recall how you voted on that first vote to approve
13 the text in August of 2004?

14 A. No. I voted, no.

15 Q. Why did you do that? Were you voting with Mr.
16 Buckingham or did you have your own reason?

17 A. No, it was the fiscal issue pretty much.

18 Q. You've been shown two copies of this chart?

19 A. Yes, sir.

20 Q. And during the questioning, Mr. Schmidt brought
21 to your attention that Casey Brown, on Plaintiffs'
22 Exhibit 660, after a strike-out, has it dated August 27,
23 2004?

24 A. Okay.

25 Q. Displayed on the screen was Plaintiffs' Exhibit

1 149, which has a handwritten notation saying the spring
2 of 2004. If you had to choose between those dates as
3 the date when you remember giving this chart to the
4 Browns and discussing it with them, which date would you
5 choose?

6 A. I thought it was the earlier, like June, when we
7 first started discussing intelligent design.

8 Q. Mr. Schmidt has drawn attention to the fact that
9 the faculty was absent from the board curriculum
10 committee meeting at --

11 A. I'm sorry. I'm sorry. I'm sorry, Pat.

12 Q. Mr. Schmidt has drawn attention to the fact that
13 the faculty were not invited to the October 7, 2004,
14 meeting of the board curriculum committee. I want to
15 ask you, did you see the absence of the faculty as
16 unusual at that meeting?

17 A. No, we generally have committee meetings, just
18 the committee and the administration.

19 Q. There's --

20 A. You know, and other committees. Like buildings
21 and grounds and other ones.

22 Q. Well, let me ask you, so the record is clear.
23 Are they always involved in board deliberations or only
24 sometimes?

25 A. Sometimes.

1 Q. And are they involved early in the process with
2 board committee deliberations or later or how does it
3 work?

4 A. Usually earlier in gathering information. And
5 then the last meeting before anything is decided or
6 thought about, then the board has their own meeting,
7 board committee meeting.

8 Q. You've been questioned about the board curriculum
9 change, the various versions, and the phrase, teach
10 versus made aware of. How did you understand the
11 purpose of the language made aware of when you voted for
12 these curriculum changes?

13 A. How did I view it?

14 Q. How did you understand the intent behind the use
15 of the phrase, made aware of, when you voted for the
16 curriculum change on October 18th, 2004?

17 A. Made aware of, I didn't view as teaching. And I
18 heard Bert say on different instances, even in her
19 class, that she makes kids aware of stuff, that she's
20 not teaching.

21 MR. SCHMIDT: Your Honor, move to strike.
22 Hearsay.

23 THE WITNESS: I'm sorry.

24 THE COURT: Sustained. We'll strike the
25 last answer with respect to what Mrs. Spahr said.

1 MR. GILLEN: Okay.

2 BY MR. GILLEN:

3 Q. At the time that you voted for the curriculum
4 change which employed the language, made aware of, did
5 you have an understanding concerning whether that was
6 consistent with teacher practices in some areas?

7 A. Yes, sir.

8 Q. Did you have an understanding concerning whether
9 make aware of, in terms of teacher practice, was
10 different from teach?

11 A. Yes.

12 Q. Do you know why teachers were -- do not take
13 questions on intelligent design?

14 A. Because that's what the administration told them.

15 Q. Do you know why?

16 A. Is that what you're saying? Do I know why? I
17 think because we were sued. I don't know. No, I don't
18 know why.

19 Q. Okay. And there's been some questioning about
20 your, the basis for your vote on October 18, 2004. And
21 I want to ask you. You didn't know a lot about
22 intelligent design, but you voted for this curriculum
23 change. Why is that?

24 A. Because if you're going to say, other theories,
25 you should have an example of what other theories is.

1 Q. Well, did you think that making students aware of
2 other theories would contribute to their education?

3 A. Yes.

4 Q. And how?

5 A. By expanding their knowledge, provided them more
6 information.

7 MR. GILLEN: I have no further questions,
8 Your Honor.

9 THE COURT: All right. Mr. Gillen, thank
10 you. Final round two, Mr. Schmidt, on recross.

11 **RECROSS EXAMINATION**

12 BY MR. SCHMIDT:

13 Q. I want to be sure I understand your testimony
14 about teachers being instructed not to teach. That's a
15 mandate issued by the board through the administration,
16 is that right?

17 A. I don't recall. I don't know that.

18 Q. Let me divide it up. Was it a board decision
19 that teachers were to be prohibited from responding to
20 questions about intelligent design?

21 A. Not to my recollection.

22 Q. Is your testimony --

23 A. But like I say, the administration is up next.
24 You can ask them. It is not my understanding that the
25 board directed them, but I might be wrong.

1 Q. Certainly, it's a district directive that
2 teachers are prohibited from responding to questions
3 about intelligent design. Is that your testimony today?

4 A. Only currently.

5 Q. Currently?

6 A. Currently.

7 Q. I want to be clear about this. Your testimony
8 today is that, teachers are prohibited from answering
9 questions about intelligent design as the part of the
10 district's response to this litigation, is that right?

11 A. Right now, we have a statement that is being
12 read. The statement would not be necessary if we were
13 not sued. So the -- they would present it however they
14 saw fit.

15 Q. That's what I'm trying to establish, Mrs.
16 Harkins. So the record is clear, the curriculum is
17 adopted --

18 A. That is correct.

19 Q. -- on October 18th, right?

20 A. Correct.

21 Q. Sometime later, and there's an exhibit in front
22 of you, but I won't bother you to look for it --

23 A. Okay.

24 Q. -- there's a memorandum sent out by Mike Baksa --

25 A. That is correct.

1 Q. -- that has a statement, correct?

2 A. That is correct, that says, teachers will not
3 answer questions, that is correct.

4 Q. And after that, there is a further directive by
5 the school district that says, teachers may not answer
6 questions about ID?

7 A. That is correct.

8 Q. And your testimony this morning is that that
9 restriction, that directive to teachers is a direct
10 response to this litigation, is that your testimony?

11 A. That's what I would presume.

12 Q. I'm not asking you to presume.

13 A. I don't know. I can't say I know. I would
14 presume that.

15 Q. Well, you've testified already today that the
16 reason teachers are told they may not teach ID and may
17 not answer questions --

18 A. Correct.

19 Q. -- is because we got sued. I think that's the
20 expression you used.

21 A. I didn't say, teach. I said, made aware of. I
22 don't think I said, teach. I think I said, made aware
23 of.

24 Q. Okay. I'm probably confusing you, so let me try
25 one more time.

1 A. Yeah, you are.

2 Q. The curriculum says, students are to be made
3 aware of intelligent design, right?

4 A. Right, that is correct.

5 Q. After that, curriculum change is adopted?

6 A. Uh-huh.

7 Q. The district prepares a four-paragraph statement
8 to be read to students?

9 A. Yes.

10 Q. Right?

11 A. That's correct.

12 Q. And sometime after that, the district establishes
13 a policy that teachers are not to teach intelligent
14 design or respond to questions from students about
15 intelligent design?

16 A. Correct.

17 Q. And I want to confirm your testimony today, that
18 this last step, this directive that teachers not teach
19 and answer questions was adopted by the district as a
20 response to being sued?

21 A. See, I don't agree with that. Teach. That word
22 teach you have in there, I have a problem with.

23 Q. Let's take teach out of it. Have teachers in
24 Dover have been told they're not to answer student
25 questions about intelligent design?

1 notes indicate that P-54 was mentioned, but it's a news
2 article, so it will be handled separately.

3 THE COURT: That's fine. We have 53 and 54,
4 and they're picked up elsewhere, obviously. They've
5 been repeatedly mentioned. We'll take them up at a
6 different point in time. Anything else from you, Mr.
7 Gillen?

8 MR. GILLEN: No, thank you, Your Honor.

9 THE COURT: Would counsel approach, please?
10 (Whereupon, a discussion was held at sidebar
11 off the record.)

12 THE COURT: All right. Thank you for
13 everyone's indulgence. What we were talking about with
14 counsel had to do with scheduling, and rather than bore
15 everyone to death about that, we took it at sidebar. I
16 will advise, particularly the assembled media
17 representatives, that it is quite clear to me that we're
18 going to have a couple more witnesses from the defense.
19 Those witnesses should be wrapped up tomorrow.

20 They may lapse over into Friday morning, but
21 I don't think so, although that could happen. It's
22 clear to me that we'll be in a position to have closing
23 arguments by counsel on Friday at some point, and that
24 this trial will end, as arranged and as agreed by
25 counsel and the Court, at a point in time on Friday.

1 And that's what the subject of the
2 discussion was, so that we're all clear on what we have
3 to do. So we'll pick it up after the lunch break.
4 Let's take a break until 10 minutes of 2. We'll return
5 at that point with Mr. Baksa's continued testimony, is
6 that correct, Mr. Gillen?

7 MR. GILLEN: That's correct, Your Honor.

8 THE COURT: All right. We'll be in recess
9 until 1:50. Thank you.

10 (Whereupon, a lunch recess was taken at
11 12:26 p.m.)

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CERTIFICATION

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

/s/ Wendy C. Yinger

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