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I N D E X

WITNESSES

<u>For - Plaintiffs:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
William Buckingham (as on cross)	3	56		
Heidi Bernhard-Bubb	67			

1 THE COURT: All right, we continue with
2 Mr. Harvey's cross-examination, or questioning on
3 cross.

4 DIRECT EXAMINATION AS ON CROSS (cont'd.)

5 BY MR. HARVEY:

6 Q. Mr. Buckingham, sometime in the morning
7 session you testified that the board deviated from its
8 normal practice of having a subject covered at a
9 planning meeting before voting at an action meeting,
10 and they did that with respect to the October 18th
11 resolution because the issue was so important. Do you
12 remember giving that testimony?

13 A. Yes.

14 Q. And tell me if you'll agree with me that the
15 issue was so important because of the importance of
16 having the students hear about an alternative to
17 evolution so they wouldn't accept it as a fact. That
18 was what was so important. Isn't that right?

19 A. It was important because a lot of work had
20 been done along this process by the entire board, and
21 I felt that the entire board should be present when we
22 vote on it.

23 Q. But you said it was the issue that was
24 important. Right?

25 A. Well, the issue is part of the process.

1 Q. And the issue that you felt was so important
2 was having students presented with an alternative to
3 evolution so they wouldn't accept evolution as a fact.
4 Isn't that correct?

5 A. I don't believe I said they wouldn't accept
6 it as a fact. I don't believe I said those words.
7 You can correct me if I'm wrong.

8 Q. Well, I'm asking you, the issue that was so
9 important for you was having an alternative presented
10 to evolution. Right?

11 A. The issue that was so important was the
12 alternative, the scientific theory of intelligent
13 design. It was a big vote, and I wanted the whole
14 board there, if we could do that. And that was the
15 one time we could be reasonably certain we'd all be
16 there.

17 Q. And it was important because you wanted an
18 alternative presented to evolution. Correct?

19 A. Yes.

20 Q. And you were concerned that if the students
21 didn't have an alternative presented to evolution,
22 they might accept the correctness of the theory of
23 evolution. Correct?

24 A. They might accept it as fact along with all
25 its flaws and faults.

1 Q. Now, also this morning you testified that
2 every time the reporters, in their reporting on the
3 June board meetings, said that the board was talking
4 about creationism, the board was actually discussing
5 about -- discussing intelligent design and the
6 reporters just had it mixed up. Do you remember
7 giving that testimony?

8 A. I don't know if they had it mixed up or did
9 it on purpose, but that's how it happened.

10 Q. But at your deposition on March 31st, you
11 said that you didn't know when the subject of
12 intelligent design came up. Isn't that right?

13 A. I would have to see the deposition.

14 Q. Well, please turn to your
15 March 31st deposition at Page 44.

16 A. I'm sorry, 44?

17 Q. Yes.

18 A. I'm there.

19 Q. Question -- this is approximately -- Line
20 11. Question: I'm just trying to use -- trying to
21 have some markers to help refresh your recollection.
22 During these course of events, when did intelligent
23 design come up? Did it come up in the early June
24 meeting, or you just have no memory whatsoever?

25 Answer: I don't know when it came up. I can't tell

1 you. That was your testimony then. Right?

2 A. I wasn't sure which meeting we were talking
3 about.

4 Q. But it's your testimony now that you don't
5 know when the subject of intelligent design came up.
6 Isn't that correct?

7 A. The subject of intelligent design came up
8 during the curriculum board meetings prior to that.

9 Q. Are you saying that it came up in June of
10 2004, at those board meetings?

11 A. I'm talking about curriculum meetings.

12 Q. You're not talking about the board meetings?

13 A. I'm talking about curriculum meetings.

14 Q. So you're saying that the subject of -- but
15 tell me this, did the subject of intelligent design
16 come up at the board meetings in June of 2004?

17 A. Yes.

18 Q. But we just looked at testimony in which you
19 said you don't remember when it came up. Isn't that
20 correct?

21 A. I wasn't sure of the dates. I was having
22 trouble with dates back then because I had the problem
23 I was dealing with with Oxycontin, and it was close
24 proximity to the time I was at the Caron Foundation.
25 I was still dealing with withdrawal from the

1 prescribed medication I had, and I was having trouble
2 with dates.

3 Q. That was in 2004 you were having trouble
4 with dates. Right?

5 A. I was having trouble with dates then and
6 sometimes I still have trouble with dates.

7 Q. Okay. Now, do you remember there was a
8 board meeting, we talked about it earlier this
9 morning, on June the 7th where you said, in response
10 to something of Barrie Callahan, you said that the
11 biology textbook was laced with Darwinism?

12 A. Yes, I used that phrase.

13 Q. And that was the June 7th meeting. Correct?
14 That's what we established this morning?

15 A. Yes.

16 Q. Now, you're not saying that intelligent
17 design was discussed at that meeting, are you?

18 A. I can't say for sure that it was or wasn't.

19 Q. You just don't know?

20 A. I don't know.

21 Q. And this morning I asked you whether you
22 were the board member who seconded the motion to
23 approve the newsletter that came out in February,
24 2005. Do you remember that?

25 A. Yes.

1 Q. And you said you didn't remember. Do you
2 remember that?

3 A. I didn't remember seconding it, no.

4 Q. I'm going to show you what's been marked as
5 P821. I'll give you a copy of it, and I'll ask Matt
6 to bring it up.

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

8 THE COURT: You may.

9 BY MR. HARVEY:

10 Q. Mr. Buckingham, I've just handed you what's
11 been marked as P821. It's the minutes of a school
12 board meeting of the Dover Area School District that
13 was held on February 14th. That's correct, isn't it?

14 A. Yes.

15 Q. And if you look at the second item on the
16 first page under Board President's Communication -- do
17 you see that?

18 A. Um-hum.

19 Q. Do you see that that says that you were the
20 one who seconded the motion to approve the newsletter?

21 A. Okay, they're talking about mailing the
22 newsletter. I don't know that I ever approved the
23 newsletter itself.

24 Q. I see. So you just seconded the motion to
25 mail the newsletter. Right?

1 A. The newsletter was shown to us. We saw it.
2 And it was to be mailed out, and we voted to do that.

3 Q. And you seconded that?

4 A. And I did second that, yes.

5 Q. Now, before the lunch break we were talking
6 about the Discovery Institute and your communications
7 with the Discovery Institute. Do you remember that?

8 A. Yes, I do.

9 Q. And we talked about a conversation that you
10 had with Seth Cooper. Do you recall that?

11 A. Yes.

12 Q. And we actually talked about you spoke to
13 Mr. Cooper on several occasions, and we focused for a
14 few minutes on the very first conversation that you
15 had with Mr. Cooper. Correct?

16 A. Yes.

17 Q. And it was after that call with Mr. Cooper
18 that he sent you the videotape and the DVD and maybe a
19 book. Do you remember that?

20 A. Yes.

21 Q. Now, I just want to place the time of that
22 first meeting -- excuse me, telephone call with
23 Mr. Cooper of the Discovery Institute. That was in
24 June of 2004 or earlier. Isn't that true?

25 A. I believe so.

1 Q. Because, in fact, you shared the DVD with
2 the science department, and that was discussed in June
3 with the schoolteachers. Correct?

4 A. I'm not sure. I'm not sure. I know it was
5 discussed with the teachers, but I'm not sure of the
6 exact time when it was.

7 Q. Well, you remember that you shared the DVD
8 or the video with the schoolteachers in or before June
9 of 2004. Correct?

10 A. I gave it to Dr. Nilsen, and he forwarded it
11 on to the science department.

12 Q. But that was --

13 A. Yes.

14 Q. -- in or before June. Right?

15 A. Yes.

16 Q. And that was the DVD or video that you got
17 from the Discovery Institute. Correct?

18 A. Yes.

19 Q. So that means that your conversation with
20 Mr. Cooper must have been in or before June of 2004.
21 Isn't that correct?

22 A. Yes.

23 Q. Now, I'd like to talk to you about the
24 Thomas More Law Center for just a couple minutes.
25 Unlike the Discovery Institute, which contacted you,

1 you contacted the Thomas More Law Center. Correct?

2 A. Yes, I did.

3 Q. And do you recall when that call was made?

4 A. No, I don't.

5 Q. Well, let's see if we can place the time of
6 that. Thomas More Law Center were the people who
7 first told you about the textbook *Of Pandas and*
8 *People*. True?

9 A. Yes.

10 Q. And you knew about the textbook *Of Pandas*
11 *and People* in late July of 2005. Isn't that correct?

12 A. Yeah, that would be true. That's this year.

13 Q. I just misspoke, I could hear from the
14 whisperings of counsel behind me. I said late July
15 of -- I meant to say late July of 2004.

16 A. Yes.

17 Q. So since you knew about the textbook *Of*
18 *Pandas and People* in late July of 2004, that means
19 that you must have spoken to the Thomas More Law
20 Center before then. Isn't that correct?

21 A. I'm not sure when I spoke to them.

22 Q. Well, you told us earlier that you learned
23 about the textbook *Pandas* from the Thomas More Law
24 Center.

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. And you clearly knew about the textbook
4 *Pandas* in late July of 2004. Correct?

5 A. Yes.

6 Q. And so you must have spoken to the Thomas
7 More Law Center before then. Right?

8 A. Okay.

9 Q. And the person you spoke to at the Thomas
10 More Law Center was Richard Thompson?

11 A. Yes.

12 Q. And all of your calls were with
13 Mr. Thompson?

14 A. Yes.

15 Q. And your purpose in calling Thomas More was
16 to seek legal advice?

17 A. Yes.

18 Q. And you had no other purpose. Correct?

19 A. That's true.

20 Q. And, in fact, you did receive legal advice
21 from the Thomas More Law Center?

22 A. Yes.

23 Q. And you did not receive any other advice,
24 correct, nothing other than legal advice?

25 A. I didn't hear what you said.

1 Q. You received no advice from the Thomas More
2 Law Center other than legal advice. Isn't that true?

3 A. Except for them letting me know that the
4 book --

5 MR. GILLEN: Excuse me, Your Honor,
6 objection. May I just -- for the witness's benefit,
7 may I make clear that he shouldn't disclose any legal
8 communications in his testimony so he doesn't waive
9 any privilege. And forgive me, Steve, for
10 interrupting you. I just want to make sure that he
11 observes the line.

12 MR. HARVEY: Your Honor, they have asserted
13 the privilege, and we're not challenging the
14 privilege.

15 THE COURT: Well, as the privilege related
16 to the communications with counsel for the Discovery
17 Institute, as I understood it, there was a claim that
18 it was so inextricably intertwined that you couldn't
19 get into any of the nonlegal advice. Now, what's your
20 intention here?

21 MR. HARVEY: Your Honor, I intend to
22 establish that the only advice that they got was legal
23 advice and that they wouldn't let us discover any of
24 their communications except for the fact that he
25 got -- he learned of *Pandas*.

1 THE COURT: So you're offering it for the
2 same purpose?

3 MR. HARVEY: Yes, Your Honor.

4 MR. GILLEN: And I withdraw the objection
5 then. I didn't mean to slight Steve. I just wanted
6 to make that clear.

7 THE COURT: No, I understand that. And I
8 think in terms of any spontaneous answer that you
9 think gets to or gets into the privilege, you can
10 renew that, or I'll stop the witness at that point.
11 So you can proceed.

12 MR. GILLEN: Thank you, Your Honor.

13 BY MR. HARVEY:

14 Q. Just to be clear, Mr. Buckingham, as we've
15 already established, as we've already established, you
16 learned about the book *Pandas* from Thomas More Law
17 Center. Right?

18 A. Yes.

19 Q. And other than that, the only other advice
20 that you got from the Thomas More Law Center was legal
21 advice. Correct?

22 A. That's true.

23 Q. And you told the board that you had been in
24 contact with the Thomas More Law Center and that it
25 would represent the board if the board were sued.

1 Isn't that true?

2 A. I don't know that I used those words. I
3 told them that the Thomas More Law Center agreed to
4 assist us free of charge in the event we needed their
5 assistance in this matter.

6 Q. And somewhere early in the process in your
7 conversations with Thomas More Law Center, they told
8 you that they would represent the board if it got
9 sued. Isn't that true?

10 A. Again, they told me they would give us legal
11 help if it became necessary free of charge. I don't
12 know if "got sued" was used.

13 Q. Okay. And you accepted the offer from the
14 Thomas More Law Center on behalf of the board. Isn't
15 that true?

16 A. I gave -- yes, yes.

17 Q. Now, that occurred -- your acceptance of the
18 offer of assistance from the Thomas More Law Center,
19 that occurred very early on in your conversations with
20 the Thomas More Law Center?

21 A. Yes, it did.

22 Q. And then later, in December of 2004, the
23 Thomas More Law Center was formally engaged to be the
24 counsel for the board in this litigation. Correct?

25 A. What time frame did you give us?

1 Q. I said December, 2004.

2 A. December of 2004 I wasn't there.

3 Q. Right, but you know that the board formally
4 engaged the Thomas More Law Center to assist in this
5 litigation in December, 2004. Even though you weren't
6 at that meeting, you knew that. Right?

7 A. I knew it was formally engaged. I didn't
8 know exactly when because I wasn't at any of the
9 meetings in December.

10 Q. And between the time that you first talked
11 to Thomas More Law Center and the time the Thomas More
12 Law Center was formally engaged, you talked to them
13 approximately four to five times?

14 A. Are you saying 45 or four to five?

15 Q. I meant four to five times.

16 A. I'm not sure how many times I talked to
17 them.

18 Q. Well, why don't you -- let me ask you a
19 separate question. Between the first time that you
20 talked to Thomas More Law Center and October 18th, how
21 many times did you talk to Thomas More Law Center?

22 A. Don't know.

23 Q. It was at least several times. Correct?

24 A. I don't know.

25 Q. Well, you said at your deposition that you

1 talked to them two to four times prior to
2 October 18th. Do you recall that?

3 A. No, I don't.

4 Q. Well, take a look at Page 120 of your
5 January 3rd deposition.

6 A. I'm there.

7 Q. And if you look at Page 120, Line 19,
8 Question: How many times prior to October 18th did
9 you talk to anyone from the Thomas More Law Center?
10 And then there was an objection. And the answer:
11 Maybe two, three, three times, maybe four. Do you see
12 that?

13 A. Again, I wasn't sure there either. That's
14 why I answered it that way.

15 Q. But it was two or more times. Correct?

16 A. I'm not sure.

17 Q. And all the calls and all the communications
18 that you had with Thomas More Law Center were about --
19 were all about seeking legal advice. Correct?

20 A. That's true.

21 Q. And you didn't get any other kind of advice?

22 A. No, sir.

23 Q. And, in fact, your attorneys from the Thomas
24 More Law Center prevented the plaintiffs in this case
25 from discovering the substance of the communications

1 that you and the board had with Thomas More Law Center
2 by asserting the attorney-client privilege. Do you
3 recall that?

4 A. Yes.

5 Q. Okay. Let's just shift to another subject
6 now, Mr. Buckingham. You don't recall, as we just
7 established a few minutes ago, when the subject of
8 intelligent design first came up. Correct?

9 A. At all?

10 Q. No, with respect to the board and the
11 process that we're talking about today.

12 A. Well, the process includes the curriculum
13 committee, and that would have been in, I guess, the
14 spring of 2004.

15 Q. So it's your testimony today that it did
16 come up in the curriculum committee in the spring of
17 2004?

18 A. I'm just guessing. I don't know.

19 Q. You don't know. And you yourself looked
20 into the subject of intelligent design in the summer
21 of 2004. Correct?

22 A. Yes.

23 Q. And the curriculum committee didn't look
24 into it, you looked into it. Isn't that true?

25 A. I was on the curriculum committee.

1 Q. Right, but the curriculum committee as a
2 whole didn't look into it, you personally looked into
3 it. Isn't that true?

4 A. I don't know if they did or not. I know I
5 did.

6 Q. Well, let's just look at the transcript of
7 your deposition on January 3rd. You told me -- well,
8 let's go to Page 68 of that deposition. Are you at
9 that page?

10 A. Page 60, yes, sir.

11 Q. 68.

12 A. 68. I'm there.

13 Q. And we're talking -- the subject is
14 intelligent design, and I asked you on Line 8, Well,
15 you were on the curriculum committee in the summer of
16 2004? Answer: Yes. And the curriculum committee
17 looked at it, didn't they? Answer: I won't say the
18 curriculum committee did. I did. Do you see that?

19 A. Yes.

20 Q. So that's what you told us on January the
21 3rd. Right?

22 A. That's what I said. And if I could clarify
23 my answer, when you talk about curriculum committee,
24 I'm thinking you're talking about the committee as a
25 whole at one time, not individual members of the

1 curriculum committee doing it at their leisure.

2 Q. Well, all you know about is what you did at
3 your leisure?

4 A. That's true.

5 Q. And let's talk about what you did. You
6 looked at the subject of intelligent design on the
7 computer. Correct?

8 A. Yes.

9 Q. You went to some Web sites?

10 A. Yes.

11 Q. You don't remember what Web sites you went
12 to?

13 A. No. Wherever the computer took me.

14 Q. And you ended up discussing the subject with
15 Thomas More Law Center. And I don't want to get into
16 the substance of that, but you ended up discussing it
17 with Thomas More Law Center. Right?

18 A. Yes.

19 Q. And you also talked to the Discovery
20 Institute about intelligent design. Correct?

21 A. Yes.

22 Q. And, again, I don't want to get into the
23 substance of that, but both of those, Thomas More and
24 Discovery Institute, that was legal advice about
25 intelligent design. Right?

1 A. Yes.

2 Q. And you also got yourself a copy of *Of*
3 *Pandas and People*. Right?

4 A. Yes.

5 Q. You ordered that from the Internet?

6 A. Yes.

7 Q. And you spent some time glancing through it.
8 Correct?

9 A. A minimal amount of time, yes.

10 Q. Right. You didn't read it?

11 A. Right.

12 Q. You just flipped through the pages to see if
13 there were any religious references in there.
14 Correct?

15 A. I won't say that. I just flipped through
16 the pages to try to get a general idea of what the
17 content of the text was. I wasn't looking for
18 anything religious in it.

19 Q. Well, that's not what you told us at your
20 deposition. If you go to the March 31st deposition at
21 Page 18.

22 A. I'm there.

23 Q. Are you at Page 18, Mr. Buckingham?

24 A. Yes.

25 Q. I asked -- Mr. Rothschild asked you on Line

1 9, Question: Did you feel, when you reviewed *Pandas*,
2 you understood it? Answer: I didn't attempt to
3 understand it fully. I wanted to make sure it didn't
4 have a religious overtone. Question: How did you go
5 about doing that? Answer: By reading it. Question:
6 Did you read it cover to cover? Answer: I didn't
7 read every single page. I skimmed through it. I
8 looked for key words, that kind of thing. Question:
9 What kind of key words were you looking for? Answer:
10 God, Christianity, Bible, Creation. It wasn't there.
11 Do you remember giving that testimony?

12 A. That's true, I wanted to make sure it wasn't
13 there.

14 Q. And the things that we just talked about is
15 all that you did to personally educate yourself about
16 intelligent design before October 18th. Right?

17 A. Yes.

18 Q. Now, let's talk about your knowledge of what
19 the rest of the board reviewed before October 18th.
20 You know that some of the board members received
21 copies of *Pandas*. Correct?

22 A. I know they went and picked them up, if
23 that's what you mean by received them, yes.

24 Q. And surmised that some of them may have read
25 parts or all of *Pandas*. Right?

1 A. I surmised they opened the book and looked
2 at it. I don't know how much they read or if they
3 read it at all or just skimmed through it.

4 Q. And that's the only material that you're
5 aware of that any board members received, was *Pandas*?
6 Materials about intelligent design I mean.

7 A. Yes.

8 Q. And no one made any kind of presentation to
9 the board of directors about the subject of
10 intelligent design, did they?

11 A. Not to my knowledge.

12 Q. And you did not participate in any
13 discussions with board members in which you tried to
14 persuade them to vote in favor of including
15 intelligent design in the board curriculum, did you?

16 A. No, I did not.

17 Q. And you never participated in any
18 discussions where any board members described their
19 understanding of intelligent design, did you?

20 A. Could you ask me the question again?

21 Q. Sure. You never participated in any
22 discussions with any members of the board of directors
23 of the Dover Area School District in which any of them
24 described their understanding of the subject of
25 intelligent design. Isn't that true?

1 A. I don't know if it is or not.

2 Q. When I asked you this question at -- or when
3 Mr. Rothschild asked you this at your deposition, you
4 said not that you know of. So you don't know of any
5 discussions in which a board member described his or
6 her understanding of the subject intelligent design,
7 do you?

8 A. I'm sorry, I missed the last part of your
9 question. You kind of dropped off.

10 Q. No, that's fine. I'd be happy to repeat.
11 I'm just saying, you're not saying here today that you
12 know of or you can remember some discussion involving
13 board members in which someone on the board described
14 their understanding of the subject of intelligent
15 design?

16 A. No.

17 Q. And no one from the board ever contacted the
18 National Academy of Sciences to ask about the subject
19 of biology textbooks or teaching biology to high
20 school students. Correct?

21 A. I don't know if they did or not.

22 Q. You don't have any information to suggest
23 that anyone did that. Correct?

24 A. That's true.

25 Q. And you don't have any information to

1 suggest that anyone contacted the American Association
2 for the Advancement of Sciences for the same kind of
3 information?

4 A. Again, I don't know if they did or not.

5 Q. And you're not aware that anybody from the
6 board contacted the American Federation of Biology
7 Teachers to find out about teaching biology to high
8 school students?

9 A. Again, I don't know if they did or not.

10 Q. And you're not aware, in fact, that the
11 board contacted any scientific or educational
12 organizations to find out about teaching biology or
13 evolution or related subjects to high school students,
14 are you?

15 A. I think that's what the Discovery Institute
16 gave me information on.

17 Q. Other than the Discovery Institute, which
18 concerned legal advice, you're not aware of anyone
19 from the board contacting any organizations to seek
20 information -- any educational or scientific
21 organizations to seek information about teaching
22 biology or related subjects to high school students,
23 are you?

24 A. I don't know if they did or not.

25 Q. And you're not familiar with the positions

1 of any of the organizations that I just mentioned --
2 and that is the National Academy of Sciences or the
3 American Association for the Advancement of Sciences
4 or the American Federation of Biology Teachers --
5 about whether intelligent design should be presented
6 to students. Right? You're not aware of any of their
7 statements or positions on that subject?

8 A. That's true.

9 THE COURT: Mr. Buckingham, I'm going to ask
10 you to keep your voice up a little bit --

11 THE WITNESS: I'm sorry.

12 THE COURT: -- or get a little closer to the
13 microphone because I'm having trouble hearing you, and
14 if I am, then certainly counsel is probably having
15 difficulty. So try to keep your voice up or get a
16 little closer to the microphone.

17 THE WITNESS: Understood, Your Honor. Thank
18 you.

19 BY MR. HARVEY:

20 Q. And in the entire process of developing and
21 passing this resolution to include intelligent design
22 in the high school science curriculum, the only
23 organizations that the board ever contacted, to your
24 knowledge, were the Discovery Institute and the Thomas
25 More Law Center. Correct?

1 A. Could you ask me that question again?

2 Q. Sure. During the entire time that the board
3 was considering or discussing in any way the change to
4 the biology curriculum or the approval of the high
5 school biology textbook or *Pandas and People*, you're
6 not aware that the board or anyone for the board or
7 acting on behalf of the board contacted any
8 organization other than the Thomas More Law Center or
9 the Discovery Institute. Isn't that true?

10 A. Again, I don't know if they did or not.

11 Q. But you don't have any information to
12 suggest that they did. Correct?

13 A. True.

14 Q. Now, you were the board member who was
15 pushing the subject of intelligent design. Isn't that
16 true?

17 A. I was the head of the curriculum committee,
18 and I was put in the position where I was involved in
19 most of the discussions. I won't say I was the board
20 member that pushed it. There were nine people on that
21 board. I couldn't do it all by myself.

22 Q. Well, would you agree with me that you were
23 the one who kept the conversation going about
24 intelligent design?

25 A. I took part in certainly more than one

1 conversation about intelligent design. I won't say I
2 kept it going. Some of the dialogue came from the
3 other side.

4 Q. Well, you were the board member who showed
5 the most interest in the issue and made sure that the
6 board curriculum committee kept addressing the issue
7 of intelligent design. Isn't that true?

8 A. I won't say that's true. It was a
9 collective effort.

10 Q. Well, when I asked you this at your
11 deposition, you told me you were the one who kept the
12 conversation about intelligent design going on the
13 board. Do you remember that?

14 A. No, sir, I don't.

15 Q. Please take a look at Page 95 of your
16 deposition transcript, the one of January 3rd.

17 A. January 3rd?

18 Q. Yes, sir.

19 A. I'm sorry, what was the page again?

20 Q. 95. Please let me know when you're there.

21 A. I'm there.

22 Q. Question, Line 10: Were you the one who was
23 pushing the idea of including intelligent design in
24 the curriculum? Answer: I wouldn't characterize it
25 that way. Question: How would you characterize it?

1 Answer: I was the one that -- I was one that -- I
2 would say I kept the conversation going. Isn't that
3 your testimony?

4 A. That's what it says. And the reason it says
5 that -- may I clarify my answer? Usually when
6 something was directed to the curriculum committee or
7 to the board, it was directed at me with regards to
8 intelligent design. In that respect, I took a part in
9 keeping the conversation going.

10 Q. And, in fact, other members of the board
11 were keeping the conversation going, as well. Right?

12 A. Yes.

13 Q. And other members of the board were pushing
14 the idea of intelligent design?

15 A. I won't say -- I won't use the word
16 "pushing." Intelligent design is something that we
17 felt would be beneficial to the kids because it's a
18 scientific theory, and we thought we'd be doing the
19 kids a good service by including that in their
20 curriculum.

21 Q. And what other board members were helping to
22 keep the conversation going about intelligent design
23 during the -- throughout the process?

24 A. Sheila Harkins, Alan Bonsell, Heather
25 Geesey. Noel Wenrich was for a while. For a while

1 Jeff Brown was and Angie Yingling.

2 Q. Now, it's your position that you wanted
3 other scientific theories taught in addition to the
4 theory of evolution so that the students would have a
5 more well-rounded science education. Correct?

6 A. Well, I focused on intelligent design
7 because I thought I knew at least a little something
8 about that, if not a whole lot, and the other theories
9 I probably knew little or nothing about.

10 Q. And you didn't insist or suggest any
11 alternatives to any scientific theories other than
12 evolution, did you, Mr. Buckingham?

13 A. I'm sorry, could you ask me again?

14 Q. Sure. You didn't suggest alternatives to
15 any scientific theories other than the theory of
16 evolution. Isn't that true?

17 A. The theory of evolution, to my
18 understanding, was flawed and it had gaps in it and I
19 didn't want the students to hear just that because
20 they would accept it as fact when there is another
21 viable scientific theory out there called intelligent
22 design. I wanted them to have more of a well-rounded
23 education.

24 Q. But my point is, you didn't suggest
25 alternatives to any scientific theories that might be

1 covered in the high school biology class other than
2 the scientific theory of evolution, did you?

3 A. I didn't know anything about other theories.
4 You know, I could only deal with what I had a little
5 bit of knowledge of.

6 Q. Well, you didn't suggest any alternatives to
7 any scientific theories in the chemistry class or the
8 physics class, either, did you?

9 A. I don't know anything about chemistry or
10 physics at all. I couldn't do that.

11 Q. Right. You were primarily concerned with
12 evolution?

13 A. Because I knew a little bit about it and I
14 knew a little about intelligent design, and I felt
15 including intelligent design would be beneficial for
16 the students.

17 Q. You don't have any background in science, do
18 you, Mr. Buckingham?

19 A. No, I don't, nothing formal.

20 Q. Excuse me?

21 A. Nothing formal, no, sir.

22 Q. And, in fact, the school district has some
23 paid professionals who are knowledgeable in the area
24 of science education, doesn't it?

25 A. Yes, they do.

1 Q. Those are the science teachers. Right?

2 A. That's true.

3 Q. And the science teachers didn't want to
4 present intelligent design as an alternative, did
5 they?

6 A. That's true.

7 Q. In fact, they didn't even want to mention
8 it. Correct?

9 A. That's true.

10 Q. So you disregarded or the board disregarded
11 the view of the only scientific education advisors
12 that it had. Isn't that correct?

13 A. We did not disregard it. We considered it
14 when we made our decisions.

15 Q. Mr. Buckingham, you don't even know whether
16 intelligent design is considered good science, do you?

17 A. In my opinion, it is, and in the opinion of
18 a lot of scientists, it is.

19 Q. Well, at your deposition, Mr. Rothschild
20 asked you about this, and you said that you didn't
21 even know whether it was good science. Do you
22 remember that?

23 A. No, sir, I don't.

24 Q. Please turn to Page 22 of your February --
25 excuse me, March 31st deposition.

1 A. Page 22?

2 Q. Yes, sir. Line 3.

3 A. I'm there.

4 Q. Mr. Rothschild asked you the following
5 questions, and you gave the following answers: Is it
6 your understanding that intelligent design is a
7 scientifically sound concept? Answer: I think it is
8 a scientific theory. Question: And if you can just
9 answer my question. Do you have an understanding of
10 whether it is sound science, good science? Answer:
11 I'm not a scientist, I can't answer that. That was
12 your testimony, wasn't it?

13 A. Yes, it was.

14 Q. Now, you wanted the students to hear about
15 the possibility that aspects of the theory of
16 evolution might be wrong. Right? That's what you
17 wanted?

18 A. There were some scientists that said there
19 were some flaws and gaps in Darwin's theory of
20 evolution, and I thought they should be told about it
21 in the normal course of teaching Darwin's theory of
22 evolution.

23 Q. But just to focus on my question, you wanted
24 the students to hear about the possibility that some
25 aspects of the theory of evolution were wrong. Right?

1 A. Yes.

2 Q. And you specifically wanted the students to
3 hear that the concept of common ancestry between
4 humans and other species was wrong. Isn't that true?

5 A. I don't remember saying that.

6 Q. Mr. Buckingham, if you could turn in your
7 notebook to what's been marked as P819. It's the last
8 exhibit in the book. And, Matt, if you could bring
9 that up.

10 A. Okay, I'm there.

11 Q. I'd like you to take a look at this
12 document. It's a news item that was published in the
13 Agape Press on October the 4th, 2004, isn't it?

14 A. I have a York Dispatch.

15 Q. It's the very last thing in your notebook.

16 MR. HARVEY: Your Honor, may I approach to
17 help?

18 THE COURT: You may.

19 THE WITNESS: I have it now, I have it now.

20 BY MR. HARVEY:

21 Q. Isn't that right? It's a news item that was
22 published in the Agape Press on October 4th, 2004.
23 Correct?

24 A. Yes.

25 Q. And are you familiar with the Agape Press?

1 A. I don't know anything about it.

2 Q. You didn't know that it was a religious news
3 organization?

4 A. No, sir.

5 Q. Well, take a look at the third full
6 paragraph here. Matt, if you could highlight that.
7 And there's a statement here that's attributed to you.
8 It says -- and I'm looking at the second sentence of
9 the third full paragraph. Quotes, However, the school
10 district's curriculum chairman, Bill Buckingham, says
11 adding the book will simply provide a balanced
12 presentation that allows students not only to learn
13 about Darwin's theory on the origins of species, but
14 also to hear about the possibility that some of
15 Darwin's suppositions, including the idea that human
16 beings evolved from apes, were wrong, close quotes.
17 Do you see that?

18 A. I see it.

19 Q. Do you remember making a statement like that
20 to a news reporter?

21 A. No, sir, I don't.

22 Q. And does that correctly state your position
23 at the time?

24 A. No, sir.

25 Q. What's incorrect about that?

1 A. I didn't say including the idea that
2 humans -- I don't think I said any of it to a
3 reporter. Did I misunderstand your question? I'm
4 sorry?

5 Q. You can just put that aside for right now,
6 Mr. Buckingham. I'm going to ask you -- that exhibit
7 we're not going to look at again, but we might look at
8 the binder in just a minute.

9 Now, you're aware that a number of copies of
10 *Of Pandas and People* were donated to the high school?

11 A. Yes.

12 Q. And they were donated to be used in the
13 classroom as reference texts. Correct?

14 A. Yes.

15 Q. And there were approximately 60 copies that
16 were donated. Do you remember that?

17 A. Yes.

18 Q. And Dr. Nilsen, who is the superintendent,
19 accepted that donation?

20 A. Yes.

21 Q. In fact, why don't we take a look just
22 quickly at P78, Page 9. It will come up on your
23 monitor or you can look in your book. P78, if you
24 look at it, is the agenda for the October 4th, 2004
25 meeting of the Dover Area School District Board of

1 Directors. Correct?

2 A. Yes.

3 Q. And then if you go -- if you look at Page 9,
4 there's a section there under curriculum with your
5 name next to it.

6 A. I'm looking at the monitor.

7 Q. I'm sorry, I told you -- I misled you. I
8 said don't bother looking at the -- you need to look
9 at the exhibit itself just to make sure you've got the
10 right one here. Please look at P78.

11 A. Okay, I have it.

12 Q. That's the agenda for the October 4th
13 meeting of the board of directors. Correct?

14 A. Yes.

15 Q. Now, if you'll look at Page 9 of that, which
16 has also got the Bates Number 135 at the bottom --

17 A. I have it.

18 Q. That shows that -- and it says, quotes, The
19 superintendent has approved the donation of two
20 classroom sets, 25 each, of *Of Pandas and People*. The
21 classroom sets will be used as references and will be
22 made available to all students, close quotes. Do you
23 see that?

24 A. Yes.

25 Q. And that, actually, is what happened at the

1 board meeting on October the 4th, that information was
2 provided to the board?

3 A. Yes.

4 Q. Now, let's talk about that donation.
5 *Pandas and People* was donated to the school district.
6 Right?

7 A. Yes.

8 Q. No taxpayer funds were involved?

9 A. That's true.

10 Q. And, in fact, you took up a collection at
11 your church for *Pandas and People*. Right?

12 A. Not as such I didn't, no.

13 Q. Well, you did take up a collection at your
14 church. Right?

15 A. Money was donated, but I didn't ask for it.

16 Q. You stood in the front of your church, in
17 the Harmony Grove Community Church, and you made a
18 statement that you were accepting donations for the
19 book *Pandas and People*. Correct?

20 A. No, I didn't. I'm sorry, I did say that,
21 but there was more to it.

22 Q. In fact, you checked with one of the church
23 elders before getting up to make that statement to see
24 if it was okay if you could make that statement at the
25 front of your church. Correct?

1 A. I spoke to a church elder to ask if I could
2 have about two minutes prior to the church starting to
3 address the congregation, yes.

4 Q. And this was on a Sunday?

5 A. Yes.

6 Q. And you stood not in the pulpit but in the
7 front of the pews while people were actually in the
8 church. Right?

9 A. Yes.

10 Q. And you said that there's a need, we don't
11 want to use taxpayer dollars, and if you feel led to
12 donate, fine. I'm not asking for money, I'm just
13 letting you know there's a need. That's what you
14 said. Right?

15 A. That's true.

16 Q. And you also said that the books were going
17 to be used as a supplement to use with the regular
18 textbook. Correct?

19 A. At that time that might have been the
20 thinking. I'm not sure. I'm not sure about that.

21 Q. Well, you didn't say anything other than
22 what I just said to you to the church, the people in
23 the church, on that Sunday when you were standing
24 there asking them to give if they felt that they
25 wanted to. Correct?

1 A. By "supplement," I meant a reference book to
2 go along supplementing the regular biology book, but
3 that's true.

4 Q. Right. But what I'm saying is, it's your
5 testimony, your claim, that you didn't say anything
6 more than what I just said, and that is specifically
7 that there's a need and we don't want to use taxpayer
8 dollars, if you want to donate, fine, I'm not asking
9 for money, I'm just letting you know there's a need,
10 and the books are going to be used as a supplement
11 with the regular textbook. You didn't say anything
12 more than that to the people in the church. Correct?

13 A. That's true.

14 Q. And the people in the church donated mostly
15 cash but one check totaling \$850?

16 A. That's true.

17 Q. And, Mr. Buckingham, isn't it true that you
18 made a reference in that statement to those church
19 members and you told them that it was important they
20 do this for religious reasons?

21 A. Absolutely not.

22 Q. You didn't raise money for *Pandas and People*
23 anyplace other than your church, did you?

24 MR. GILLEN: Your Honor, objection. To the
25 extent that Mr. Harvey is trying to create an

1 inference that by asking at church, there's some sort
2 of religious plot, I believe the question begins to
3 burden Mr. Buckingham's ability to associate for the
4 purpose of his free exercise. I mean, where he
5 asked -- you know, if he asked the church, if that's
6 where his friends and community is, that's his
7 business. It's improper to try and draw some
8 inference to that.

9 THE COURT: Well, that's argument. That's
10 not an evidentiary objection, is it?

11 MR. GILLEN: Well, I think it's an
12 evidentiary objection to the extent that he's seeking
13 to elicit this information to support the inference
14 proposed by his question.

15 THE COURT: I'm still hearing argument. I'm
16 not hearing an objection --

17 MR. GILLEN: Well, and I don't wish to
18 argue.

19 THE COURT: -- based on the rules of
20 evidence. I understand your point, and it might be
21 argument, it might be valid argument. Under the
22 circumstances, I think the question is fair. He asked
23 him did he raise money at any other place than his
24 church.

25 MR. GILLEN: Yes. And my purpose is in

1 suggesting that the thrust of the question to create
2 that inference is improper because he's trying to make
3 it look as if there was some sort of religious mission
4 when he asked his friends.

5 THE COURT: Well, that goes to the weight
6 that I'll give it. It's a bench trial. I mean, I
7 still don't hear something that's grounded in the
8 rules of evidence.

9 MR. GILLEN: Well, I guess I'm saying he
10 does have a First Amendment privilege to free
11 exercise, and I think that Mr. Harvey is -- the thrust
12 of his question right now is to burden his ability to
13 associate and ask his co-religionists to support
14 something he thinks is worthwhile.

15 THE COURT: Unless I missed something,
16 though, the First Amendment privilege that he has that
17 you're citing to doesn't act as a bar to answering
18 that question. Do you think it does?

19 MR. GILLEN: Well, I think it does border
20 right on the limit because it is creating this
21 inference that would be a burden on his free exercise
22 right. If people weren't free to do what he's done,
23 to ask, or if it could be used against them later, it
24 would be a burden on their ability to go in front of
25 any congregation and ask support for any number of

1 things.

2 THE COURT: I don't see it, but let's hear
3 from Mr. Harvey.

4 MR. HARVEY: Your Honor, I don't in any way
5 mean to infringe upon this man's religious freedom in
6 any way, but if he's going to take the stand and claim
7 that he had no religious purpose in the actions of the
8 school board and then they took up a donation at a
9 church, I'm entitled to explore that to show that he,
10 indeed, had religious purposes.

11 THE COURT: I think it's a fair question in
12 the context of this case and in the line of questions
13 that Mr. Harvey has already asked, so I overrule the
14 objection. Do you remember the question, sir?

15 THE WITNESS: Yes, I do.

16 THE COURT: All right. You can answer the
17 question.

18 THE WITNESS: I did that. And I was going
19 to ask to clarify my answer, but it's kind of been
20 done by my attorney there. My wife and I are both
21 very active in our church, and the friends that we
22 have in the community basically are the people that go
23 to our church. They're the people we talk to, they're
24 the people we socialize with basically more than,
25 other than family, anyone else. And that was the

1 natural place for me to go to do that.

2 BY MR. HARVEY:

3 Q. So you collected money at the church because
4 the church is your life, is what you're essentially
5 saying. Correct?

6 A. I didn't say the church is my life. I have
7 a family. I have other interests. But the church is
8 an important part of my life. The people that go
9 there are important to me. It's, if you will, an
10 extended family, and that is how I got to make the
11 statement there. It had nothing to do with, look,
12 because we're Christians, I think we ought to do that.
13 It had nothing -- I didn't mention Christianity at
14 all. I talked to them just like they were my friends,
15 which they are.

16 Q. And the direct answer to the question I
17 asked you previously is, you didn't ask for money at
18 any place other than your church. Isn't that true?

19 A. I don't know that I asked for money there.
20 I guess we get -- what does "asked" mean? I said what
21 you said. I said if you want to give money, fine.
22 I'm not asking you for any, I'm not telling you to
23 give any, it's up to you if you see a need and you
24 want to help.

25 Q. Well, you didn't go to any place other than

1 your church to make any kind of a statement and then
2 accept whatever donations people would spontaneously
3 give you. You only did that at your church. Right?

4 A. I don't go to many other places where I
5 would have people like -- a group of people. You
6 know, I did what I could do with the school board. I
7 was active in the church. I had physical limitations.
8 There were limitations to what I could do, and I did
9 the best I could with what I had.

10 Q. You said earlier that a literal reading of
11 the Bible was one of the foundations of your faith?

12 A. True.

13 Q. And that's true for the -- you believe for
14 the people who worship with you at your church, the
15 Harmony Grove Community Church. Correct?

16 A. I won't speak for them.

17 Q. Mr. Buckingham, do you really think that the
18 people at your church would have given money for this
19 book if they didn't think that there was some
20 religious connection to it?

21 A. The people in our church give money to a lot
22 of things. This book was one thing of many that they
23 donated money to, and it's not always because of a
24 religious thing.

25 Q. Do they usually donate money to public

1 schools or, better yet, have they ever donated any
2 money to a public school before?

3 A. I don't know. I've only been going to
4 church there for ten years.

5 Q. Now, let's take a look at what's been marked
6 as P80. Matt, could you put that up. Mr. Buckingham,
7 do you have in front of you what's been marked as P80?

8 A. Yes, I do.

9 Q. That's actually a copy of the check that you
10 wrote to Donald Bonsell for the \$850 that you
11 collected at your church. Right?

12 A. Yes.

13 Q. Now, we've whited out any identifying
14 information, any codes or anything like that. I don't
15 know whether you have that check -- your account still
16 open, but I just want to let you know there's no --
17 hopefully there's no information on there. And if you
18 look at this, the check is dated October the 4th,
19 2004. Right?

20 A. Yes.

21 Q. And it's drawn on the bank account for you
22 and your wife. Right?

23 A. Yes.

24 Q. And under the "re" line, it says, *Of Pandas*
25 *and People* -- I can't read the last word, can you?

1 A. Books.

2 Q. And that's your handwriting. Right?

3 A. I think I printed it, yes.

4 Q. And then that's your signature on the check?

5 A. Yes.

6 Q. And the check is, in fact, for \$850. Right?

7 A. Yes.

8 Q. Now, Donald Bonsell is Alan Bonsell's
9 father. Right?

10 A. Yes, he is.

11 Q. And you gave the check to Alan Bonsell to
12 give to his father. Correct?

13 A. Yes.

14 Q. And you made the check out to Alan -- to
15 Donald Bonsell because it was your understanding that
16 he was actually going to be the one who purchased the
17 copies of *Of Pandas and People*. Right?

18 A. I felt he probably would, but I didn't know
19 if he was going to give it to someone else.

20 Q. And at a board meeting in the fall of 2004,
21 a question was raised by a man named Larry Snoke, who
22 was a former member of the board, about who donated
23 the copies of *Pandas* to the school district. Right?

24 A. Yes, I remember that.

25 Q. And the board didn't provide any answer to

1 Mr. Snoke's question, did they?

2 A. I don't recall what the response was.

3 Q. Well, you didn't speak up and say that you
4 knew where the money came from, did you?

5 A. No, I didn't.

6 Q. And are you aware that Mr. Alan Bonsell
7 spoke up and said he knew where the money came from?

8 A. I don't remember him saying that.

9 Q. And the reason why you didn't speak up at
10 the board meeting in the fall of 2004 about who
11 donated the money for the donation of *Pandas* is
12 because you didn't want anybody to know that the money
13 was raised at a church. Isn't that true?

14 A. That's not true. I didn't -- I couldn't say
15 who donated the money because I didn't know where cash
16 came from. We had mailboxes inside the church that
17 the pastor and the elders used to communicate with us
18 from week to week, and envelopes would be placed in
19 there with cash in it. There was no note, there was
20 nothing, it was just cash. I didn't know who gave it
21 to me, I just knew where it came from.

22 Q. So you just knew that it came from members
23 of your church, but you didn't know which specific
24 members of your church. Right?

25 A. As far as the cash goes, that's true.

1 Q. And there was also one check, and you knew
2 who that came from. Right?

3 A. Yes, I do.

4 Q. And you think that because you didn't know
5 the specific names of the people at your church who
6 gave the money, that you shouldn't tell this former
7 board member, this member of the public, where this --
8 that the money for the donation was collected at your
9 church. You didn't think you should share that
10 information. Right?

11 A. I didn't see where it was relevant.

12 Q. Well, actually, you wanted to hide that
13 information. Isn't that true, Mr. Buckingham?

14 A. No. If someone would have asked me if it
15 came from the church, the people at the church, I
16 would have told them it did, but it never came up.

17 Q. Well, Mr. Buckingham --

18 A. It was put to us, who donated the money, and
19 I don't know who did. I know there were people in a
20 certain setting that did, but I don't know who they
21 were.

22 Q. If someone had asked you specifically about
23 that, you would have told them. Right?

24 A. Asked me about what?

25 Q. About who donated the money.

1 A. I don't know who donated the money.

2 Q. I'm asking you, if somebody had asked you
3 specifically who donated the money, you're telling us
4 you would have told them. Right?

5 A. As far as the cash goes, yes.

6 Q. Well, as a matter of fact, Mr. Buckingham, I
7 asked you specifically who donated the money, and you
8 didn't tell me at your deposition on January the 3rd,
9 2005. Isn't that true?

10 A. The cash are you talking about?

11 Q. I asked -- let's review your testimony.

12 Please go to Page 57, Line 9.

13 A. Of the March or --

14 Q. This is January 3rd.

15 A. 57, Line 9?

16 Q. Yes, sir.

17 A. I'm there.

18 Q. I asked you the following questions, and you
19 gave the following answers:

20 Question: The school district received a
21 number of copies of the book *Of Pandas and People*.

22 Correct? Answer: Yes. Question: Do you know how

23 many copies? Answer: I've been told there were 60.

24 I haven't seen them. Question: Do you know where

25 that came from, who donated the money? Answer: No, I

1 don't. Question: You have no idea? Answer: I have
2 thoughts, but I don't know. Question: What are your
3 thoughts? Answer: I think it could have a tie to
4 Alan Bonsell, who was board president at the time.
5 Question: Why do you think -- I know you're not
6 saying it was, but why do you think it might have ties
7 to Mr. Bonsell? Answer: Because he was the president
8 of the board at the time, and I just deduced from that
9 that.

10 That was the testimony that you gave on
11 January the 3rd of 2005. Isn't that true?

12 A. Doesn't that reference the books, not the
13 money?

14 Q. Isn't that the testimony that you gave on
15 January the 3rd, 2005?

16 A. Yes.

17 Q. And then if you'll turn, Mr. Buckingham,
18 to -- or, actually, go down the page to Line 24 on
19 Page 58. Didn't I ask you the following questions and
20 you give the following answers:

21 Question: Were you ever at a board meeting
22 where someone asked who donated the book to the
23 school, in fact, Larry Snoke, a former board member
24 asking who donated it? Answer: I think he expressed
25 a wonder-type thing over where they came from. I

1 don't think -- I don't remember anybody asking
2 directly where they came from. Question: Were you
3 curious to know where it came from? Answer: I know
4 they came from someone in the public sector. I know
5 we didn't use taxpayer funds to pay for them.

6 Question: Did you ask where it came from?

7 Answer: No. Question: Why didn't you ask? Answer:

8 Didn't want to know. Question: Why didn't you want

9 to know? Answer: Well, what purpose would it serve?

10 Question: Well, because you're a board member and the

11 school district is part of your responsibility as a

12 board member and maybe where these books came from

13 would be something that you should know. Answer: No,

14 I think it was a wonderful gesture, and I didn't

15 concern myself with where they came from.

16 That was your testimony, wasn't it,

17 Mr. Buckingham?

18 A. I believe Larry Snoke was asking where the

19 money came from, not where the books came from, and

20 that was why I answered that that way. And the rest

21 of it is my testimony, yes.

22 Q. Well, when I asked you, why didn't you ask

23 where it came from, and you said, didn't want to know,

24 what you really meant to say was that you knew where

25 it came from. That was the right answer there, wasn't

1 it? That was the correct answer?

2 A. I didn't know who donated the cash. I knew
3 they were in a certain building when they put it in
4 the box, but I don't know who put the cash in the box.

5 Q. You knew that I was seeking that --

6 A. In the mailbox.

7 Q. You knew that I was seeking that information
8 when I asked you those questions on January 3rd, and
9 you didn't give me the -- you didn't tell me anything
10 about donations being taken -- a collection being
11 taken at your church. Isn't that correct?

12 A. I didn't consider it a collection. I didn't
13 ask for it. They just did it because there was a need
14 there. I didn't ask them for it.

15 Q. Mr. Buckingham, you lied to me at your
16 deposition on January 3rd, 2005. Isn't that true?

17 A. How so?

18 Q. By not telling me, when I asked you those
19 questions, that you knew that a collection had been
20 taken at your church for the book *Of Pandas and*
21 *People*.

22 A. I did not take a collection.

23 Q. Well, you wrote the check to Donald Bonsell,
24 didn't you?

25 A. Yes, I did.

1 Q. And you didn't tell me that you knew that --
2 anything about Mr. Bonsell, did you?

3 A. I don't recall if I did or not.

4 Q. Well, we just read your testimony. You
5 didn't say anything about Donald Bonsell in that
6 testimony, did you? Do you want to go back and look
7 at it?

8 A. Well, there's more testimony than that. I
9 don't know if I referenced him anyplace else in it or
10 not.

11 Q. Well, when I was asking you about where the
12 donation of *Of Pandas and People* came from, you didn't
13 mention anything about Donald Bonsell, did you? Do we
14 need to relook at your testimony again?

15 A. I'd like to, yes.

16 Q. Okay. Let's do that. January 3, Page 57,
17 Line 9. Let me read it to you again, Mr. Buckingham,
18 and you tell me if I've got it right.

19 Question: The school district received a
20 number of copies of the book *Pandas and People*.

21 Correct? Answer: Yes. Question: Do you know how
22 many copies? Answer: I've been told there were 60.

23 I haven't seen them. Question: Do you know where
24 that came from, who donated them? Answer: No, I

25 don't. Question: You have no idea? Answer: I have

1 thoughts, but I don't know. Question: What are your
2 thoughts? Answer: I think it could have a tie to
3 Alan Bonsell who was board president at the time.

4 Question: Why do you think -- I know you're not
5 saying it was, but why do you think it might have ties
6 to Mr. Bonsell? Answer: Because he was the president
7 of the board at that time, and I just deduced from
8 that that. Did I read that correctly?

9 A. Yes, you did.

10 Q. No reference to Donald Bonsell in there.
11 Right?

12 A. No, there wasn't.

13 Q. You should have told me about that at the
14 time, shouldn't you, to be truthful?

15 A. I thought I answered the question the way
16 you asked it. Money was given to Alan Bonsell to
17 forward to someone, turning out to be his father, that
18 it was going to go someplace else. I don't --

19 Q. Well, you knew that it was being given to
20 Donald Bonsell because you wrote his name on the
21 check?

22 A. That's true.

23 THE COURT: Mr. Harvey, why don't you move
24 to the next area. I get the point, and you've made
25 the point very effectively, and I don't think you need

1 to stay in this area. I'll give you some more
2 latitude if you want, a little bit, but --

3 MR. HARVEY: Your honor, I'm done.

4 THE COURT: -- I get the point effectively.

5 MR. HARVEY: No further questions at this
6 time.

7 THE COURT: All right. Mr. Gillen.

8 MR. GILLEN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GILLEN:

11 Q. Good afternoon, Bill.

12 A. Good afternoon.

13 Q. Mr. Harvey has covered a great deal of
14 ground this morning, and I've got a few questions that
15 I want to ask you. There was some mention of a moment
16 of silence or prayer in 2003. Let me ask you, while
17 you were on the Dover Area School District board, did
18 you ever contemplate requiring mandatory prayer for
19 students?

20 A. Never.

21 Q. Did you ever discuss mandatory prayer for
22 students with anyone on the Dover Area School District
23 school board?

24 A. No.

25 Q. Mr. Harvey has directed your attention to

1 certain portions of your deposition taken on
2 March 31st, 2005. I'd ask you to look at Page 22.

3 A. I'm sorry, page --

4 Q. 22. And the portion of the deposition that
5 you were questioned about had to do with whether you
6 understood intelligent design was a scientific theory.
7 Something that was not noticed was your testimony on
8 the remainder of that page. And I'd like to ask you,
9 Bill, when you considered intelligent design as a
10 scientific theory, where did you get that idea?
11 That's a fair question. Where did you get that idea?

12 A. I first heard the term "intelligent design"
13 right after I came on the school board. And when I
14 was appointed to the chair of the curriculum committee
15 right prior -- or right after, I researched
16 intelligent design on the computer to some extent, not
17 exhaustive, to try to familiarize myself with it.

18 Q. And did you encounter information about
19 scientists who you believe supported the theory?

20 A. Yes, I did. I came across one Web site that
21 said there were like 300 scientists that supported it.

22 Q. At any time during this process relating to
23 the biology text and the change to the biology
24 curriculum did you believe that intelligent design was
25 a religious theory?

1 A. No, sir.

2 Q. Did you believe that intelligent design was
3 creationism?

4 A. No, sir.

5 Q. I want to ask you a few questions about the
6 statement given by your wife without causing undue
7 marital discord. I want to ask you, did she discuss
8 the content of what she was going to say with you
9 prior to attending the board meeting?

10 A. No, sir, she did not.

11 Q. Did she tell you what issue she was going to
12 address?

13 A. No, she did not.

14 Q. Did you talk to her afterwards about what
15 she had said?

16 A. I did talk to her afterwards about what she
17 said, and I told her that we weren't -- that her
18 remarks were biblical and that we weren't talking
19 about creationism, we were talking about intelligent
20 design, and intelligent design is not a biblical
21 theory, it's a scientific theory, and that she was way
22 off base when she made her remarks.

23 Q. There's this notion you've expressed here
24 today about the myth of separation of church and state
25 or separation of church and state being a myth.

1 You've said that you mentioned that statement at some
2 of these board meetings. And I want to ask you, how
3 did that come up, the separation of church and state?

4 A. It came up in reference to things said by
5 people in the public, and on one occasion Angie
6 Yingling uttered those words to me. And my response
7 was, in my opinion, the separation of church and state
8 is a myth. I don't think it's in the Constitution
9 anyway.

10 Q. Yeah, but what was your point? I mean, was
11 your point separation of --

12 A. We weren't teaching -- I'm sorry.

13 Q. What was your point? You need to explain
14 that so it's not misunderstood. Was your point that
15 separation of church and state is a myth, so we can
16 teach creationism?

17 MR. HARVEY: Your Honor, objection.
18 Leading.

19 MR. GILLEN: I'm asking what his point was.

20 THE COURT: Well, you can ask him what his
21 point was, but not the second part of the question, so
22 the objection is sustained. You can rephrase.

23 MR. GILLEN: Okay.

24 BY MR. GILLEN:

25 Q. What was your point when you're raising this

1 notion that --

2 A. Well, when the separation of church and
3 state issue was raised, the point was that we were not
4 talking about creationism, we were talking about
5 intelligent design, which had nothing to do with the
6 church at all.

7 Q. There's been discussion, too, about a mural.
8 And I want you to explain, what was the significance
9 of the mural to you?

10 A. The science teachers told us they didn't
11 feel comfortable teaching the origins of life. And I
12 found out after that that there had been a teaching
13 aid in a biology classroom aiding in the teaching of
14 just that, the origins of life. And I felt like I was
15 kind of sandbagged, and I just felt I wasn't being
16 dealt with fairly.

17 Q. What do you mean by that?

18 A. Because I wasn't being told the truth.

19 Q. By whom?

20 A. By the teachers in the science department.

21 Q. There's been some discussion of Mr. Reeser.
22 During this period, the June, July, the summer of
23 2004, did you know that Mr. Reeser had destroyed that
24 mural?

25 A. I didn't even know there was a mural until

1 after we had this -- we talked about the teachers
2 didn't want to teach the origins of life, and we
3 walked out of the meeting, and Mrs. Harkins says,
4 that's funny, that doesn't go along with the mural
5 that was the teaching aid in the biology room. I
6 said, what mural are you talking about? I'd like to
7 see it. And she said, it's not there anymore.

8 So I left, and I knew that Larry Reeser was
9 a long-time employee of this school district. I
10 thought, well, if anybody saw it, he did. So I went
11 to his house, and I asked him if he had ever seen
12 anything like that. And he said, I not only saw it, I
13 have pictures of it. And he gave me two pictures of
14 it.

15 Q. And what was the significance of the
16 pictures? Why did you take them?

17 A. I took them because they were given to me,
18 and, to me, they helped to substantiate that I didn't
19 think I was being dealt with fairly. I felt like I
20 was being sandbagged, because on one hand they're
21 saying they don't want to teach origins of life, but
22 on the other hand, they have a mural in the biology
23 class as a teaching aid for origins of life.

24 Q. Well, let me ask you about the mural. Did
25 you tell Jen Miller that you danced with glee or

1 laughed with glee when the mural was destroyed?

2 A. I didn't know anything about that mural
3 until after I got on the curriculum committee and we
4 talked to the science department and Sheila Harkins
5 told me that it existed. I had never heard of it.

6 Q. Mr. Harvey has asked you some questions
7 about putting the proposed curriculum change on the
8 agenda for the October 18th, 2004 meeting despite the
9 fact that it had not been placed on the agenda for the
10 prior meeting.

11 Had items been placed on the agenda for a
12 second board meeting without consideration at a prior
13 board meeting on other occasions?

14 A. As I recall they had, if they had to be
15 expedited for some reason.

16 Q. Bill, when you voted for this curriculum
17 change on October 18th, 2004, did you believe
18 intelligent design was creationism?

19 A. Absolutely not.

20 Q. Let me ask you about conversations with
21 Casey Brown. Did you ever ask Casey Brown if she was
22 born again?

23 A. No, I did not.

24 Q. Did Casey Brown ever discuss her religious
25 beliefs with you?

1 A. Yes, she did.

2 Q. Did you ever question Casey Brown about her
3 religious beliefs?

4 A. No, I didn't.

5 Q. Did you ever pressure Angie Yingling to vote
6 on any measure of the Dover Area School District
7 school board that was up for review, up for
8 consideration by the board saying that she had to do
9 so to be a good Christian?

10 A. No, sir, I did not.

11 Q. Well, let me ask you this. When you voted
12 for this curriculum change, did you believe that you
13 were putting in place an illegal curriculum change?

14 A. No, sir, I did not.

15 Q. Was it your purpose to permanently prevent
16 the purchase of the biology textbook recommended by
17 the science faculty of Dover Area School District at
18 any time while you were on the board?

19 A. No, sir.

20 MR. HARVEY: Objection, Your Honor. I'm
21 willing not to object to a certain amount of leading
22 because it's sometimes helpful to develop the
23 testimony and keep things moving, but we're now
24 exclusively into leading, and I object to the
25 question.

1 THE COURT: Well, he answered that question.
2 Mr. Gillen, I'll ask you to try to lead only in those
3 areas that are likely not going to be problematic, and
4 these go to the heart of the case, so use some
5 caution.

6 MR. GILLEN: I will attempt to do so, Your
7 Honor.

8 BY MR. GILLEN:

9 Q. Did you ever intend to prevent the teaching
10 of evolutionary theory at Dover Area School District?

11 MR. HARVEY: Objection, leading.

12 MR. GILLEN: That's did, did you ever
13 intend. How else can I ask him, I guess is the
14 question?

15 THE COURT: I'm going to allow the question
16 because we've got to keep moving. I'll allow that
17 particular question, and I'll overrule the objection.
18 You can answer the question, sir.

19 THE WITNESS: Could you ask me again,
20 please?

21 BY MR. GILLEN:

22 Q. Did you ever have as your purpose to prevent
23 the teaching of evolutionary theory at Dover Area
24 School District?

25 A. Never.

1 Q. What was your purpose in supporting the
2 proposed curriculum change on October 18th, 2004?

3 A. We were doing it for the students, to give
4 them an alternative scientific theory to go along with
5 their biology class. We thought we were doing
6 something good for them.

7 MR. GILLEN: No further questions, Your
8 Honor.

9 THE COURT: All right. I'll give one more
10 round to Mr. Harvey. Now, let me just ask, are you
11 going to be fairly brief?

12 MR. HARVEY: Extremely, Your Honor.

13 THE COURT: Okay, because --

14 MR. HARVEY: In fact, it's over.

15 THE COURT: You don't have any questions?

16 MR. HARVEY: I don't have any questions.

17 THE COURT: Because I think this would be an
18 appropriate time to take a break. I know you want to
19 get the reporters' testimony in today, do we not? I
20 see Mr. Benn standing patiently in the back. So why
21 don't we take a break at this point for about 15
22 minutes and -- or 20 minutes, let's say, and then we
23 will pick up. And I think that should give us enough
24 time, plenty of time to get the reporters' testimony
25 in before we close the record for today. We'll be in

1 recess for 20 minutes.

2 (Recess taken.)

3 THE COURT: All right, our next witness.

4 MR. WALCZAK: Plaintiffs call Heidi
5 Bernhard-Bubb.

6 MR. WHITE: Your Honor, just for the record,
7 we continue our objection to the limited discovery and
8 the limited inquiry we're allowed to have with the
9 reporters per your orders, especially the one on
10 September 28th of 2005.

11 THE COURT: Well, your objection is
12 preserved, I'm sure, but we'll note that for the
13 record.

14 MR. WHITE: Thank you, Your Honor.

15 THE COURT: You may take the stand, ma'am.

16 HEIDI BERNHARD-BUBB, called as a witness,
17 having been duly sworn or affirmed, testified as
18 follows:

19 THE COURT: Before we start the questioning,
20 Mr. Benn, do you want to enter your appearance
21 specially for the purpose of this examination? Are
22 you going to go on the record?

23 MR. BENN: Yes.

24 THE COURT: Why don't you do that.

25 MR. BENN: Thank you. My name is Niles

1 Benn, and I'm here on behalf of Heidi Bernhard-Bubb,
2 as well as Mr. Maldonado, who is going to be
3 testifying after Ms. Bernhard-Bubb. I'm representing
4 both reporters with respect to this matter and have
5 represented them through this process, including the
6 court order referred to by Mr. White.

7 THE COURT: And it's the Court's
8 understanding and I want to make sure that we're all
9 clear, and I mean all counsel, that Mr. Benn is
10 appearing specially in the capacity as just stated and
11 that Mr. Benn will be allowed to interpose an
12 objection pursuant to his limited representation of
13 the reporters. Is that acceptable or understood, at
14 least, by all counsel?

15 MR. WHITE: Yes, Your Honor.

16 MR. BENN: Thank you, Your Honor.

17 MR. WALCZAK: Yes, Your Honor.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. WALCZAK:

21 Q. Good morning -- or afternoon. Would you
22 please state your name.

23 A. Heidi Bernhard-Bubb.

24 Q. And what do you do, Ms. Bernhard-Bubb?

25 A. I'm a stay-at-home mother, and I freelance

1 for the York Dispatch.

2 Q. And do you work part time for the newspaper?

3 A. That's correct.

4 Q. And that is a newspaper in York County?

5 A. Yes, that's correct.

6 Q. Do you work for any other newspaper?

7 A. No, just the York Dispatch.

8 Q. And how long have you been working for the
9 newspaper?

10 A. For four years.

11 Q. And are you assigned certain beats?

12 A. Yeah. I -- excuse me, I have several
13 general assignments.

14 Q. And are you assigned to two municipal boards
15 and one school board?

16 A. Right, that's what I have currently.

17 Q. And is one of those school board assignments
18 the Dover Area School District?

19 A. It isn't currently, but it was previously.

20 Q. When did you cover the Dover Area School
21 District?

22 A. From September of 2001 through July of this
23 year.

24 Q. And I want to focus your testimony today on
25 2004. Do you recall whether you attended all of the

1 Dover Area School Board's public meetings during that
2 year?

3 A. Yes, I believe I did.

4 Q. And might you have missed one on October the
5 18th?

6 A. Yes, I did.

7 Q. Other than that, your recollection is that
8 you attended all of their public school board
9 meetings?

10 A. Yes, that's correct.

11 Q. I want to go through a series of questions
12 that will apply to all of the articles before we focus
13 on the eight articles today. When you attend Dover
14 area school board meetings, you generally sit in the
15 same place?

16 A. Yes, near the front of the room.

17 Q. Why do you do that?

18 A. So I can hear and see.

19 Q. And do you leave meetings in the middle?

20 A. No, not usually.

21 Q. And when we look at a newspaper article,
22 which we'll do very shortly, do you write the titles
23 to the articles?

24 A. No. That is done by the editors.

25 Q. And there's also usually a sub -- is it

1 called a title or a heading?

2 A. Subheadings.

3 Q. And you don't write those?

4 A. Right, that's correct, I don't write those.

5 Q. But the text in the article, that is your
6 work product?

7 A. Yes.

8 Q. And do sometimes editors add text to your
9 articles?

10 A. No.

11 Q. When you go to these meetings, do you
12 typically take notes?

13 A. Yes, I do.

14 Q. And is it your practice to take accurate
15 notes?

16 A. Yes, absolutely.

17 Q. And do you occasionally write down quotes?

18 A. Yes, that's right.

19 Q. And do you have a practice as to how you do
20 that in your notes?

21 A. I write them out longhand, and I always put
22 them in quotation marks if it's a direct or exact
23 verbatim quote.

24 Q. And you attempt to write down exactly what
25 it is you heard?

1 A. That's correct.

2 Q. And when you go to write your articles, do
3 you refer to your notes?

4 A. Yes.

5 Q. Is that the primary source that you use for
6 writing the article?

7 A. Yes.

8 Q. And when it comes to the articles about the
9 Dover Area School Board district meetings, typically
10 when do you write those articles in relation to when
11 the meeting occurred?

12 A. Typically the evening of the meeting, right
13 after the meeting, and sometimes maybe the day or two
14 after depending on the nature of whatever I'm writing.

15 Q. So it may depend on the deadline that you
16 have?

17 A. That's correct.

18 Q. But usually it's written within a few hours
19 or, at most, a day of the actual meeting?

20 A. Yes, that's right.

21 Q. So the meeting is still fresh in your mind
22 when you're writing the story?

23 A. Yes.

24 Q. Is there another newspaper in York County?

25 A. Yes, there is.

1 Q. And what is that newspaper?

2 A. That's the Daily Record.

3 Q. And do you cooperate on stories with
4 reporters from the Daily Record?

5 A. Absolutely not. The Daily Record is our
6 competition.

7 Q. So you don't have, like, joint ventures,
8 joint articles?

9 A. No.

10 Q. Do you know a reporter named Joseph
11 Maldonado?

12 A. Yes.

13 Q. And who is he?

14 A. He is a freelancer for the Daily Record, and
15 he also covered the Dover Area School District.

16 Q. And was he covering the school board
17 meetings in 2004 at the same time you were covering
18 them?

19 A. Yes, that's right.

20 Q. So typically you would both be at the same
21 meetings?

22 A. Yes.

23 Q. And did you ever discuss with him a story
24 before you actually wrote it?

25 A. Never.

1 Q. Have you ever discussed a story with him,
2 period?

3 A. Never.

4 Q. Now, I'm going to discuss with you eight
5 articles that you wrote between June and November of
6 2004. And let me just ask you a couple of general
7 questions that will apply to all eight of these
8 articles. These are all articles about which you were
9 questioned in your deposition a couple of weeks ago.

10 Do you testify here today knowing that
11 you're under oath, that those articles accurately
12 depict what happened at Dover School Board meetings?

13 A. Absolutely.

14 Q. And that the quotes attributed by you to
15 people are accurate based on you having actually heard
16 them say the respective comments?

17 A. Yes.

18 Q. And that when you wrote that someone, quote,
19 said something, even though it's not in quotes, your
20 characterization was, to the best of your ability,
21 true and accurate?

22 A. Yes.

23 MR. WALCZAK: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 MR. WALCZAK: Matt, could you put up
2 Plaintiffs' Exhibit 804, please.

3 BY MR. WALCZAK:

4 Q. Now, Ms. Bubb, since you have not been in
5 the courtroom before -- let me just establish, you
6 have not listened to any of the testimony in this
7 case?

8 A. That's correct.

9 Q. This is your first day you've been in court?

10 A. Yes.

11 Q. You did not hear Mr. Buckingham's testimony
12 today?

13 A. No.

14 Q. And nobody reported to you what he said?

15 A. No.

16 Q. Let me just tell you that you can look at
17 the exhibit in two places. You can either look at the
18 hard copy, we also project it up on the screen, which
19 is the same thing that's on the monitor in front of
20 you, whatever is easier for you. Do you recognize
21 what's been marked as Plaintiffs' Exhibit 804?

22 A. Yes.

23 Q. And what is that?

24 A. It's an article that I wrote that ran
25 June 8th, 2004.

1 Q. And did you write this after attending the
2 Dover Area School District board meeting on June the
3 7th?

4 A. Yes.

5 Q. As you sit here today, do you have any
6 independent recollection of what happened at that
7 meeting?

8 A. Yes, I do.

9 Q. Have you had an opportunity to review this
10 article before you came in here today?

11 A. Yes, I have.

12 Q. Is what you wrote in this article an
13 accurate description of what you personally heard and
14 observed on June 7th, 2004?

15 A. Yes.

16 Q. Now, I want to take a little bit more time
17 in going through this article to help explain your
18 writing style. The articles after this we'll go
19 through more quickly.

20 Let me ask you, the practice that you
21 applied in writing this article, is that your general
22 practice that you use for all articles?

23 A. I'm sorry, can you be more specific?

24 Q. Well, you know what, let's go through this,
25 and I'll come back and ask you that question later.

1 A. Okay.

2 Q. Matt, if you could highlight the first
3 highlighted passage beginning with the third
4 paragraph. At the very top of the highlighted passage
5 it reads, William Buckingham, board member and head of
6 the curriculum committee, said he is unhappy with the
7 proposed ninth-grade biology textbook because it
8 teaches evolution and not creationism. Did I read
9 that correctly?

10 A. Yes.

11 Q. Now, there are no quotes in this paragraph.
12 Is that correct?

13 A. Right.

14 Q. But it does say, in the middle of that
15 paragraph, that Mr. Buckingham said he is unhappy with
16 the proposed ninth-grade textbook. Could you explain
17 to us how you wrote that, when you put quotes in and
18 when you don't put quotes in?

19 A. Yes, I can do that. Primarily in this
20 situation where I'm paraphrasing, paraphrasing is
21 primarily used for the sake of concision and for the
22 sake of accuracy.

23 A lot of times, for instance, during a
24 meeting a dialogue might go on for over an hour. A
25 person may say a number of things. Their position may

1 become clear in response to questions, to dialogue
2 with other board members, et cetera.

3 And so primarily paraphrasing is used to
4 accurately reflect their position based on the content
5 of the entire conversation and based on what they
6 said. But whether I'm quoting something verbatim or
7 whether I'm just attributing to them or paraphrasing a
8 quote, it always comes directly from what they said.

9 Q. So, for instance, in that first paragraph
10 that I just read to you, there are no quotes, but to
11 your recollection, are there things that you could
12 have put in quotes?

13 A. I don't know the exact language, but
14 certainly it was something that he said, that he was
15 unhappy with the textbook, et cetera.

16 Q. Now, let's look at the second paragraph
17 there. Matt, if you could highlight that quote. And
18 that reads, quote, It is inexcusable to have a book
19 that says man descends from apes with nothing to
20 counterbalance it, Buckingham said of the book. And
21 he's referring to Miller and Levine.

22 So, now, that is in quotes and attributed to
23 William Buckingham. So what does that mean that it's
24 in quotes?

25 A. That means that it was taken verbatim from

1 what he said and nothing was omitted, there was -- all
2 of the language was his.

3 Q. And as you described your practice earlier,
4 what you would have done is written down exactly those
5 words in your notes?

6 A. That's correct.

7 Q. And do you put quotes around that?

8 A. Yes, I do, so I'll know that that's a direct
9 quote.

10 Q. So when you go back to write the story a few
11 hours later or the next day, you can look back and
12 recall that that was a quote?

13 A. That's correct.

14 Q. And is that the practice you applied to that
15 particular quote?

16 A. Yes.

17 Q. And is that the practice you apply to all
18 the quotes that you write in your articles?

19 A. Yes.

20 Q. Let's look at the third paragraph there.

21 And it says that Mr. Buckingham had not read the
22 current text, current biology text. He said that the
23 committee would be looking for another textbook.

24 Again, there are no quotes in that paragraph.

25 Correct?

1 A. Right.

2 Q. But you do say that he, quote, said that the
3 committee will be looking for another textbook. So do
4 I understand that at some point in the course of the
5 meeting, that is, he said words to that effect?

6 A. That's correct.

7 Q. Let's look at the fourth paragraph there.
8 And it reads, He said he had no objection to evolution
9 being presented as a theory but believes it should not
10 be presented as the only one to explain human
11 existence. Now, again, there are no quotes in that
12 paragraph?

13 A. Right, that's correct.

14 Q. And are there some things that could have
15 been in quotes in that paragraph?

16 A. I believe so. I think "no objection to
17 evolution being presented as a theory" could have been
18 put into quotes and "human existence" could have been
19 put into quotes.

20 Q. Matt, if you could highlight the next
21 paragraph. Now, here you have a quote attributed to a
22 Noel Wenrich. Who is Noel Wenrich?

23 A. Noel Wenrich was a board member at the time.

24 Q. And, Matt, if you could highlight the quote.
25 And if you could read that quote, please.

1 A. (Reading:) In science, there are competing
2 theories. When you cease to present both, the
3 remaining one becomes fact.

4 Q. So that would have been something that you
5 heard him say, and what you wrote there was verbatim
6 what you heard?

7 A. That's correct.

8 Q. Matt, if you could highlight the next set of
9 passages, please. Now, starting at the bottom of the
10 first column there and going down to about the middle
11 of the second column, is that something you wrote?

12 A. No, that was put in by the editors the
13 following morning.

14 Q. So that was not something that was discussed
15 at the meeting?

16 A. No.

17 Q. So that was given to provide some additional
18 context?

19 A. Yes, that's correct.

20 Q. Matt, if you could now highlight the next
21 set of passages, please. Looking at the second column
22 about halfway down, it talks about Superintendent
23 Richard Nilsen. Now, are these comments that
24 Dr. Nilsen made during the board meeting?

25 A. I believe these comments were made after,

1 directly after the board meeting.

2 Q. And do you, on occasion, stay and ask
3 questions of board members and administrators?

4 A. Almost every meeting, yes.

5 Q. And can you give us context about where
6 you -- when and where this conversation took place?

7 A. Yes. This would be directly after the
8 meeting. Dr. Nilsen sits at the front of the room at
9 the table with the school board members. I typically
10 go up to the front of the table and ask my questions
11 there, try to catch him before he leaves.

12 Q. And let's look at the second paragraph
13 there. It says, quote, The teachers cannot teach from
14 a book that is not board-adopted. Is that an exact
15 quote that you heard Dr. Nilsen make?

16 A. Yes, that's correct.

17 Q. And then in the next paragraph it says, The
18 district, quote, will always look for textbooks that
19 give a balanced approach to all topics, end quote.
20 Again, is that you directly quoting Dr. Nilsen?

21 A. Yes.

22 Q. And he said this to you at the end of the
23 June 7th board meeting?

24 A. Yes.

25 Q. Now, in the last paragraph of the amplified

1 passage there, it says, When asked what this means for
2 the evolution versus creationism debate, Nilsen said,
3 Dover will, quote, present all options and theories,
4 end quote. Now, the part that's in quotes, I presume,
5 is what he said directly?

6 A. Right, that's correct.

7 Q. Now, just above that you say, What that
8 means for the evolution versus creationism debate.
9 Where did that term "creationism" come from?

10 A. From the content of the discussion during
11 the meeting.

12 Q. Did that have anything to do with the
13 question you asked Dr. Nilsen?

14 A. Yes. I asked him a question -- oh, I see
15 what you're asking. Yeah, the sentence above that is
16 putting into context his answer, and that was the
17 question that I was asking him.

18 Q. And do you recall what that question was?

19 A. Probably something very similar. I don't
20 remember exactly, but it was, you know, what does that
21 mean when you're talking about evolution versus
22 creationism, something along those lines.

23 Q. And do you recall asking him specifically
24 about creationism?

25 A. Yes.

1 Q. So that is a word you would have used on
2 June the 7th?

3 A. Yes. That's what I understood them to be
4 talking about.

5 Q. Matt, if we could go to the next set of
6 highlighted passages. Now, starting at the bottom of
7 the second column on Exhibit 804 down through the
8 middle of the third column, there's a quote from an
9 ACLU staff attorney, Paula Knudsen. Is that something
10 that happened on the evening of June 7th?

11 A. No, that would have happened the next
12 morning, and, again, that was written by the editors.

13 Q. And at the end of that passage it says,
14 Nilsen said he is not concerned about exposing the
15 district to a possible lawsuit. When did he say that?

16 A. I believe I asked him a question to that
17 effect at the meeting that evening, after the meeting.

18 Q. Let's go to the next passage. Now, here's a
19 passage referencing Board President Alan Bonsell. And
20 you write in there that he said the board would look
21 for a book that teachers and board members could
22 approve, one that presents a fair and balanced
23 approach. Do you know what he was talking about
24 there?

25 A. I can only say that he was -- that was in

1 relation to the discussion brought up about the book
2 that was being discussed.

3 Q. And, again, there are no quotes in that
4 paragraph. Do you have a recollection of whether any
5 of those words could have been in quotes?

6 A. I believe "fair and balanced approach" could
7 have been in quotations.

8 Q. So that's something you remember Mr. Bonsell
9 saying, "fair and balanced"?

10 A. Yes, that's correct.

11 Q. And he was talking about the biology
12 curriculum?

13 A. Yes, that's correct.

14 Q. And the teaching of evolution?

15 A. Specifically the discussion about the
16 biology textbook.

17 Q. And, Matt, if you could highlight the next
18 passage, the last two paragraphs in the third column.
19 Now, in that first paragraph it talks about Barrie
20 Callahan. Now, she's a former board member?

21 A. Yes.

22 Q. And it says, Since last year, when she was
23 still a member of the board, Barrie Callahan has been
24 questioning the board as to why the new book was not
25 approved.

1 A. Yes.

2 Q. So you had heard Ms. Callahan raise the
3 issue of the need for a new biology book before that
4 meeting?

5 A. Yes.

6 Q. And she raised it again at this meeting?

7 A. Yes.

8 Q. And then in the next paragraph it says,
9 Buckingham said, although the book had been available
10 for review since May, 2003, he had just recently
11 reviewed the book himself and was disturbed the book
12 was laced with Darwinism. I think I read that
13 correctly.

14 A. Yes.

15 Q. Does that look right?

16 A. Yes.

17 Q. Now, again, there are no quotes in that
18 paragraph. Do you have a recollection as to whether
19 any part of that statement attributed to
20 Mr. Buckingham could have been in quotes?

21 A. Yes. "Laced with Darwinism" could have been
22 put into quotations and maybe the part about him being
23 disturbed.

24 Q. So you remember him saying that he was,
25 quote, disturbed, and remember him saying, laced with

1 Darwinism?

2 A. Yes.

3 Q. And if you would turn the page now, please.

4 Matt, if you could highlight the next passage, please.

5 The first two paragraphs there refer to a resident

6 named Max Pell.

7 A. Yes.

8 Q. Now, is this Mr. Pell speaking during the

9 public comment portion of the meeting?

10 A. Yes.

11 Q. Now, you've attributed to him a quote that

12 reads, quote, Creationism is a religious theory, he

13 said, why does it have to be taught in biology class,

14 end quote. Did I read that correctly?

15 A. Yes.

16 Q. Does that mean you heard Max Pell say those

17 exact words?

18 A. Yes, I did.

19 Q. And that's what you wrote in your notes?

20 A. Yes, that's right.

21 Q. So he mentioned the word "creationism" as he

22 stood up to make his comments to the school board?

23 A. Yes, he did.

24 Q. And if you could go down to the third

25 paragraph. Matt, if you could highlight. Now, that

1 paragraph talks about Mr. Buckingham believing that
2 the separation of church and state is mythical and not
3 something he supports. Now, is that something that
4 Mr. Buckingham said during the meeting?

5 A. No, he said that after the meeting.

6 Q. And what was the context of you hearing
7 that?

8 A. I was asking him questions about whether he
9 was concerned that he would be in danger of violating
10 the separation of church and state.

11 Q. Now, again, there's nothing in quotes in
12 that paragraph, but are there things that you
13 distinctly remember him saying?

14 A. Yes. He did use the word "mythical," and he
15 did say that it was not something he supports.

16 Q. And when you say not supports, that's the
17 separation of church and state?

18 A. That's correct.

19 Q. And the last passage that I want to direct
20 your attention to in this article are the last two
21 paragraphs in that column. And here you are
22 attributing statements to Michael Baksa?

23 A. Yes.

24 Q. And who is he?

25 A. He's the assistant superintendent of Dover

1 Area School District.

2 Q. And when did you hear these statements?

3 A. Again, after the meeting, I asked him
4 questions.

5 Q. Now, in that last paragraph, it says, quote,
6 He said that he would present options to the
7 curriculum committee and give the committee more
8 information about how the district teaches evolution
9 and creationism. Now, did he use the term
10 "creationism"?

11 A. I can't recall if he used the term exactly,
12 but I asked the question with the term "creationism"
13 in it, asking him how the district teaches evolution
14 and how it addresses creationism if it comes up in the
15 class.

16 Q. So your question to him would have contained
17 the word "creationism"?

18 A. That's correct.

19 Q. And did he object to that terminology?

20 A. No, he did not.

21 Q. Matt, if you could highlight the term
22 "creationism" in this article. Now,
23 Ms. Bernhard-Bubb, the term "creationism" appears
24 throughout this article. Matt, if you could put the
25 second page up there, as well. And we've highlighted

1 all the times that "creationism" appears here in
2 orange. But the only time that I believe it appears
3 in this article in quotes is when Mr. Pell was using
4 it.

5 A. Okay, yes.

6 Q. And yet it appears, I believe, nine or ten
7 times in this article.

8 A. Yes.

9 Q. Why did you use the term "creationism"
10 throughout this article?

11 A. Because that's what I heard the board
12 members talking about.

13 Q. So you, that evening, heard board members
14 use the term "creationism"?

15 A. Yes.

16 Q. And who do you recall saying the word
17 "creationism"?

18 A. Mr. Buckingham made reference to it
19 specifically, and I believe Mr. Wenrich and
20 Mr. Bonsell.

21 Q. And in what context did they use the word
22 "creationism"?

23 A. They were talking about the biology book.
24 It was in the context of the conversation about the
25 biology book, about presenting another theory, an

1 alternative to evolution.

2 Q. And you also -- you yourself used the word
3 "creationism" in questions that you posed to
4 Mr. Buckingham, Mr. Nilsen, and Mr. Baksa?

5 A. That's correct.

6 Q. And in their response, they didn't correct
7 you in your phraseology?

8 A. No.

9 Q. And, now, you wrote the article that evening
10 after the board meeting?

11 A. Yes.

12 Q. So this would have been 10, 11 o'clock on
13 Monday night, June the 7th?

14 A. Yes.

15 Q. And then you e-mailed the article to your
16 editors that evening?

17 A. Yes.

18 Q. And the York Dispatch is an afternoon
19 publication?

20 A. That's correct.

21 Q. So it would come out on Tuesday afternoon?

22 A. Yes.

23 Q. And I think you mentioned that your editors
24 may have added some passages?

25 A. They did to this one, yes, the following

1 morning.

2 Q. And do they change or add to what you have
3 reported?

4 A. No.

5 Q. Now, did you receive any complaints about
6 this article, about whether it was accurate?

7 A. No, I did not.

8 Q. So no board member came and told you that
9 your reporting was inaccurate?

10 A. No.

11 Q. Did any administrator tell you that?

12 A. No.

13 Q. Did anybody tell you that?

14 A. No.

15 Q. Did anyone from the school district ask you
16 to print a correction or retraction?

17 A. No.

18 Q. Let's just cover all the articles at this
19 point. Did you ever receive a complaint or concern
20 about the accuracy of any of your articles about the
21 school board in 2004?

22 A. No, not specifically.

23 Q. You say "not specifically." Let's hold that
24 for a minute. We'll come back to that. To your
25 knowledge, did your editors receive any complaints

1 about your reporting on the Dover Area School Board?

2 A. No, not to my knowledge.

3 Q. And to your knowledge, did your editors
4 receive any requests for corrections or retractions
5 about any of the Dover Area School District articles?

6 A. No.

7 Q. And would you have known if they had gotten
8 complaints about your reporting?

9 A. Yes, I would have known.

10 Q. Now, you said that you didn't hear -- you
11 didn't receive any complaints from Dover Area School
12 District board members or administrators specifically.

13 A. Yes.

14 Q. Did you hear complaints not specifically?

15 A. In general, starting mostly I think in
16 November when --

17 Q. I'm sorry, this would be November of 2004?

18 A. Excuse me, November, 2004, there were
19 general comments made during board meetings about the
20 media in general, but no specific comments.

21 Q. And was this after the board had already
22 passed the policy?

23 A. Yes.

24 Q. And did you have, for instance, national --
25 representatives from national media outlets attending

1 these meetings?

2 A. Yes, that's correct.

3 Q. And do you recall what national media
4 reporters were there?

5 A. I believe that was during the time that
6 Nightline was there doing a piece on the district. I
7 believe Time Magazine had been there. I think
8 reporters from the Associated Press, Washington Post,
9 and I think maybe The New York Times had been there.

10 Q. And do you know whether the board members
11 knew that these reporters were there?

12 A. I can't speak to that.

13 Q. And when you say that they made complaints,
14 this was during the public board meetings?

15 A. Yes.

16 Q. And do you recall what kind of complaints
17 they made?

18 A. General complaints that the media had gotten
19 it wrong or, you know, blown it out of proportion,
20 that kind of thing.

21 Q. But did any representative of the Dover Area
22 School District ever talk to you specifically about
23 something you had written and claimed that it was
24 wrong?

25 A. No.

1 Q. Matt, if you could pull up Plaintiffs'
2 Exhibit 805, please.

3 MR. WALCZAK: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. WALCZAK:

6 Q. I show you what's been marked as Plaintiffs'
7 Exhibit 805. Do you recognize this?

8 A. Yes, I do.

9 Q. Is this about a particular board meeting?

10 A. This is in reference to the June 7th board
11 meeting.

12 Q. And the date of this article is June the
13 9th?

14 A. That's correct.

15 Q. Is this a follow-up article to explore
16 issues raised by the June 7th meeting?

17 A. Yes.

18 Q. And your editors asked you to work on this
19 piece?

20 A. Yes, they did.

21 Q. Matt, if you could highlight the first three
22 paragraphs. In that first paragraph, it says, The
23 quest of several Dover Area School Board members to
24 find a high school biology textbook that teaches both
25 evolution and creationism could put the district at

1 odds with the U.S. Supreme Court and at risk of a
2 lawsuit. Is that based on what you had observed on
3 June the 7th?

4 A. Yes, that's based on the discussion at the
5 meeting on the 7th.

6 Q. And in that next paragraph, you talk about
7 William Buckingham and say that he was disturbed by a
8 proposed high school biology textbook because it was
9 laced with Darwinism?

10 A. Yes.

11 Q. Again, there are no quotes in that
12 paragraph, but as I believe you testified before,
13 "disturbed" and "laced with Darwinism" could have been
14 in quotes?

15 A. That's correct.

16 Q. And those are things that you recall
17 Mr. Buckingham actually saying?

18 A. Yes.

19 Q. Matt, if you could highlight the second set
20 of passages. If you'll look down, I think it's the
21 fifth paragraph, it starts with, A recommendation. It
22 says, A recommendation on the book will come from the
23 curriculum committee, which also includes board
24 members Sheila Harkins, Casey Brown, Buckingham -- and
25 Casey Brown. Buckingham said the committee would look

1 for a book that presented both creationism and
2 evolution.

3 Do you recall Bill Buckingham saying that
4 they were looking for a book that presented both
5 creationism and evolution?

6 A. I don't know -- he didn't say that exact
7 sentence. He said -- that goes back to the
8 discussion, though, where he was talking about wanting
9 to look for a book that might contain creationism and
10 looking for a balance to the theory of evolution.

11 Q. But you did hear him say that he was looking
12 for a book that presented creationism?

13 A. Yes.

14 Q. And the next set of paragraphs at the bottom
15 of column one going over to the first paragraph of
16 column two, it talks about a Robert Boston, spokesman
17 for Americans United for Separation of Church and
18 State.

19 A. Yes.

20 Q. Did you talk to Mr. Boston?

21 A. I did.

22 Q. And when was that?

23 A. I had called him -- I believe it would have
24 been on Tuesday, June 8th.

25 Q. And you wrote in there that the district

1 will be inviting a lawsuit if it chooses a textbook
2 that teaches creationism?

3 A. Yes.

4 Q. And, again, there are no quotes, but could
5 any of that have been in quotes?

6 A. I can't recall exactly, but that's based on
7 what Mr. Boston told me.

8 Q. If you could, Matt, highlight the next set
9 of passages. If you look at the bottom of the second
10 column and over onto the first paragraph on the next
11 page, you say, But Buckingham said he is unconcerned
12 about violating the separation of church and state.

13 A. Yes.

14 Q. When did he say that?

15 A. That's going back to the questions that I
16 asked him after the June 7th meeting.

17 Q. And then on the next page, at the top, you
18 write, Although he swore to uphold the Constitution
19 when he became a school board member, Buckingham said
20 he didn't come to uphold the separation of church and
21 state, which he sees as a myth, and the Supreme
22 Court's interpretation.

23 A. Yes.

24 Q. Is that, again, something he said to you
25 on -- after the board meeting?

1 A. Yes.

2 Q. And, again, there are no quotes there, but
3 is what you wrote there the essence of what he said?

4 A. Yes. And some of that is his language,
5 again, saying that it was a myth, the Supreme Court's
6 interpretation.

7 Q. And one last set of passages here. If you
8 would look at the last two-thirds of that column,
9 first column on the second page, you're talking about
10 Assistant Superintendent Baksa?

11 A. Yes.

12 Q. And when did you have that conversation with
13 him?

14 A. I called him -- again, that would have been
15 on Tuesday, the 8th.

16 Q. And in the third highlighted passage, you
17 wrote, However, he said teachers may make reference to
18 creationism in class, and the district would not
19 prevent students from pursuing other theories. Now,
20 is "creationism" a term he used with you on June the
21 8th?

22 A. Yes, specifically in response to a question
23 I was asking him about how they dealt with it if
24 creationism comes up in class.

25 Q. And then in that next paragraph you said,

1 Baksa said -- The district has not rejected the
2 proposed new textbook, Baksa said, but it will
3 continue to look for a book that will make everyone
4 happy. Again, is that something he said to you on
5 Tuesday, June the 8th?

6 A. Yes.

7 Q. And that's after you discussed with him the
8 reference to creationism?

9 A. Yes, that's correct.

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

11 THE COURT: You may.

12 MR. WALCZAK: Matt, if you could highlight
13 Plaintiffs' Exhibit 806, please.

14 BY MR. WALCZAK:

15 Q. Do you recognize this article?

16 A. Yes.

17 Q. And is this something that you wrote about
18 the June 14th Dover Area School District board
19 meeting?

20 A. Yes, it is.

21 Q. And when did you write this?

22 A. The evening of the 14th after the meeting.

23 Q. And do you have an independent memory as you
24 sit here today of what happened at that board meeting?

25 A. Yes, I do.

1 Q. And prior to your testimony here today, did
2 you review this article?

3 A. Yes, I did.

4 Q. And is what you wrote in this article
5 accurate?

6 A. Yes.

7 Q. And the quotes that you attribute to people
8 in this article, are they based on what you actually
9 heard?

10 A. Yes.

11 Q. Now, the title here says, Church/state issue
12 divides, and then the subtitle is, Creationism draws
13 100 to Dover meeting. Now, is that something you
14 wrote?

15 A. No, that's not.

16 Q. That's something added by the editors?

17 A. Yes, that's correct.

18 Q. And there's a picture here.

19 A. Yes.

20 Q. And that's taken by somebody from the
21 newspaper?

22 A. Yes, that's right.

23 Q. And did the -- so that would be the
24 photographer?

25 A. Yes, John Pavoncello.

1 Q. And do you know if Mr. Pavoncello attended
2 the meeting?

3 A. Yes, he was there.

4 Q. And do you know who wrote the caption under
5 the photograph?

6 A. John wrote that.

7 Q. And did you consult with him about that?

8 A. No.

9 Q. Matt, if you could highlight the first
10 several paragraphs. Now, in that first paragraph, it
11 says -- it's pretty hard to read there, but I think it
12 says, Nearly a hundred people -- can you make it out
13 on the copy you have?

14 A. I can't, but I believe it's something to --
15 nearly a hundred residents, students, and teachers
16 attended, either residents or parents.

17 Q. To continue debating whether creationism
18 should be taught alongside evolution in the high
19 school biology curriculum. So there were nearly a
20 hundred people at that meeting?

21 A. Yes, that's right.

22 Q. And is that a relatively large number for
23 the Dover School Board?

24 A. Yes.

25 Q. What do average meetings draw, if there's an

1 average?

2 A. Maybe 10, 15 people.

3 Q. Matt, if you could highlight the next set of
4 passages. If you look at the bottom, the very last
5 two-line paragraph over to the top of the next page,
6 it talks about Board Member and Curriculum Committee
7 Member Casey Brown said it is her duty as a board
8 member to uphold her oath to support the Constitution
9 and the school code, which she said is clear about the
10 separation of church and state.

11 A. Yes.

12 Q. And you say Casey Brown said that?

13 A. Yes, she did.

14 Q. And so you remember her talking about living
15 up to her oath to maintain the separation of church
16 and state?

17 A. Yes, that's what I wrote.

18 Q. Matt, if you could highlight the last few
19 passages on that first column on the second page.
20 There's a subheading there. Is that the proper term?

21 A. Yes.

22 Q. It says, The least offensive option.

23 A. Yes.

24 Q. And it reads that Trudy Peterman, who is the
25 principal at Dover Area School District?

1 A. She was at the time.

2 Q. And Bertha Spahr, who is the head of the
3 science department?

4 A. Yes.

5 Q. It says that they said the faculty
6 considered that Dover was a religious community when
7 they selected the book which they believed was the
8 least offensive option?

9 A. Yes.

10 Q. And that's something that they said during
11 the public comment portion of the meeting?

12 A. Yes.

13 Q. So they talked about how Dover was a
14 religious community?

15 A. That's what they said, yes.

16 Q. And that they believed that the Miller and
17 Levine book was the least offensive option?

18 A. Yes.

19 Q. Now, if you go to the third paragraph among
20 those that are highlighted, it says, Brown quoted.
21 And there were two Browns on the school board then.
22 Correct?

23 A. Yes, there were.

24 Q. And do you know which Brown --

25 A. That was Casey Brown.

1 Q. And the other Brown was her husband, Jeff?

2 A. Yes, that's right.

3 Q. And you write, Brown quoted from the
4 teacher's edition that the purpose of the section on
5 evolution was to, quote, help students understand the
6 evolutionary world view and promote understanding
7 without compelling belief, end quote.

8 A. Yes.

9 Q. And so, in fact, that is a verbatim quote of
10 what Casey Brown said at the meeting?

11 A. Yes, that's right.

12 Q. And in the last two paragraphs of the ones
13 we've highlighted here, Bertha Spahr is talking about
14 the state standards do not include creationism?

15 A. Yes.

16 Q. And do you recall her using the word
17 "creationism"?

18 A. I do.

19 Q. Now, I want to go to the first four
20 paragraphs at the top of the second column on the
21 second page of Plaintiffs' Exhibit 806. And I believe
22 the subtitle is, Opponents' position. Can you tell
23 what that says?

24 A. Yeah, I believe so.

25 Q. Matt, if you could highlight the second

1 paragraph there, please. Could you read the quote
2 there, please, Ms. Bernhard-Bubb?

3 A. (Reading:) Nearly 2,000 years ago someone
4 died on a Cross for us, shouldn't we have the courage
5 to stand up for Him, he asked.

6 Q. Now, that's in quotes?

7 A. Yes.

8 Q. So does that mean it's verbatim what you
9 heard?

10 A. Yes.

11 Q. So you wrote down, as best you could,
12 exactly what you heard and you put quotes around it in
13 your notes?

14 A. Yes.

15 Q. In the next paragraph down, it says, Board
16 Members Alan Bonsell and Noel Wenrich agreed with
17 Buckingham saying creationism should be taught to
18 balance evolution.

19 Now, again, there's nothing in quotes. Was
20 that written based on you hearing Mr. Bonsell say that
21 creationism should be taught?

22 A. That was based on the content of the
23 conversation, primarily what Mr. Buckingham was saying
24 and Mr. Bonsell and Mr. Wenrich agreeing.

25 Q. So they agreed with Mr. Buckingham's

1 statement that creationism should be included in the
2 curriculum?

3 A. Yeah. Yes, they were agreeing with
4 Mr. Buckingham's position.

5 Q. Now, in that next paragraph it says,
6 Buckingham apologized for offending any teachers or
7 residents of the community with his remarks but was
8 unapologetic about his belief that the country was
9 founded on Christianity and not other religions and
10 that a, quote, liberal agenda was chipping away at the
11 rights of Christians in this country. Did I read that
12 accurately?

13 A. Yes.

14 Q. Now, you wrote, The country was founded on
15 Christianity.

16 A. Yes. That was something he said.

17 Q. And you remember him saying that?

18 A. Yes, something to that effect.

19 Q. And then you have a quote, Liberal agenda
20 was chipping away at the rights of Christians in the
21 country.

22 A. Yes.

23 Q. And that's in quotes, so that's verbatim
24 what Mr. Buckingham said?

25 A. Yes.

1 Q. Now, there's been some significant dispute
2 in this case about whether Mr. Buckingham said the
3 quote, Nearly 2,000 years ago someone died on a Cross
4 for us, shouldn't we have the courage to stand up for
5 Him.

6 Is there any doubt, as you sit here today,
7 that you heard him make that statement at the
8 June 14th, 2004 Dover Area School Board meeting?

9 A. I have no doubt that he said that.

10 Q. And he made that statement during the public
11 portion of the meeting?

12 A. Yes, during -- it wasn't during public
13 comment, it was during the board discussion, but it
14 was made in public.

15 Q. And that would have been where?

16 A. In the -- where the meeting was held, he was
17 sitting at the front of the room at the board table.

18 Q. Matt, if you could highlight the next
19 paragraphs. In that middle paragraph on the second
20 column you say, His remarks, referring to
21 Mr. Buckingham, were echoed by his wife, Charlotte
22 Buckingham, who said that teaching evolution was in
23 direct opposition to God's teachings and that the
24 people of Dover could not, in good conscience, allow
25 the district to teach anything but creationism.

1 Do you recall Charlotte Buckingham using the
2 word "creationism"?

3 A. Yes, I do.

4 Q. And then in the next set of paragraphs,
5 beginning with "the minister's view" going to the top
6 of that third column, who is Warren Eshbach?

7 A. He's a resident of the district, retired
8 minister.

9 Q. He is a minister?

10 A. Yes.

11 Q. And you wrote there that -- in that first
12 paragraph that he said he was concerned that the issue
13 was polarizing the district?

14 A. Yes.

15 Q. And is "polarizing" a word he used?

16 A. I believe it was.

17 Q. And then in that next paragraph you said
18 that he said that he believes people might believe in
19 both God and evolution, adding that while public
20 schools should have values, religious beliefs should
21 be taught at home and church. Eshbach also said he
22 was concerned that compelling the staff to teach
23 creationism might expose the district to legal
24 ramifications that could impact the taxpayers.

25 Now, there are two aspects to that. The

1 first one was that he expressed concern that religious
2 beliefs should be taught at home and church?

3 A. Yes, he said something to that effect.

4 Q. And he said that during the public comment
5 portion of the meeting?

6 A. That's correct.

7 Q. And then he expressed concerns about the
8 teaching of creationism?

9 A. Yes, he did.

10 Q. And do you recall him using the term
11 "creationism"?

12 A. Yes, he did.

13 Q. And then one last passage here, the next
14 paragraph down, again, we're back to a Mr. Robert
15 Boston from Americans United for Separation of Church
16 and State. Now, was he at the meeting?

17 A. No, he was not.

18 Q. And so are you referring back to when you
19 had spoken to him the week before?

20 A. I'm making reference -- I say, has said,
21 making reference to the previous article.

22 Q. And at the very end of that paragraph it
23 reads, quote, Buckingham said he did not believe the
24 members of AU know what it means to be American.

25 A. Yes.

1 Q. So he said words to that effect?

2 A. That's correct.

3 Q. So he was disparaging the organization?

4 A. That's what he said.

5 Q. And did he say that during the meeting?

6 A. Yes, he did.

7 Q. So it was while the meeting was going on and
8 not afterwards privately to you?

9 A. Right.

10 Q. Now, Matt, if you could highlight the uses
11 of creationism. Now, in looking at this June 15th
12 article, creationism is used in the subheading.

13 A. Yes.

14 Q. Is that right?

15 A. Yes. Sorry.

16 Q. And creationism is used in the caption of
17 the photograph?

18 A. Yes.

19 Q. And creationism is used many times in the
20 article?

21 A. That's correct.

22 Q. And I know you said that you've heard
23 Mr. Buckingham or had heard Mr. Buckingham use the
24 term "creationism"?

25 A. Yes.

1 Q. And Ms. Spahr used the term "creationism"?

2 A. She did.

3 Q. And Mr. Bonsell?

4 A. I don't believe Mr. Bonsell used the term at
5 this meeting. I just believe he was saying something
6 else should be taught to balance evolution. He was
7 agreeing with Mr. Buckingham saying it.

8 Q. Do you recall Mr. Bonsell using
9 "creationism" at the June 7th meeting?

10 A. That's the only time, yes.

11 Q. But you do remember him using it on
12 June 7th?

13 A. Yes.

14 Q. And Mr. Wenrich used the term "creationism"?

15 A. Again, I believe at this -- in reference to
16 this article the only person on the board who used
17 that term was Mr. Buckingham.

18 Q. But you remember Mr. Wenrich using that term
19 on June the 7th?

20 A. Yes, and then agreeing with him during the
21 discussion about creationism at this meeting.

22 Q. And you heard Charlotte Buckingham use
23 creationism?

24 A. Yes.

25 Q. And Reverend Eshbach used creationism in his

1 comments?

2 A. Yes, he did.

3 Q. Matt, if you could pull up Exhibit 807,
4 please.

5 MR. WALCZAK: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. WALCZAK:

8 Q. I show you what's been marked as Plaintiffs'
9 Exhibit 807. Do you recognize this document?

10 A. Yes, I do.

11 Q. And this is an August 3rd article that you
12 wrote?

13 A. Yes, that's correct.

14 Q. And you're reporting on a Dover Area School
15 Board meeting that occurred on August the 2nd?

16 A. Yes.

17 Q. Matt, if you could highlight the creationism
18 and intelligent design. Now, we've highlighted in
19 orange here the uses of creationism and then
20 highlighted in blue the uses of intelligent design.
21 Is this -- is the August 2nd meeting the first time
22 you heard school board members mention intelligent
23 design?

24 A. Yes, it is.

25 Q. So you do not recall any board members using

1 the term "intelligent design" before August 2nd at a
2 school board meeting?

3 A. No, that was the first time that I heard it,
4 at a board meeting.

5 Q. Matt, if you could highlight the paragraphs
6 under the subheading "companion." Now, in that first
7 paragraph under the subheading "companion," you wrote,
8 William Buckingham, the head of the school board
9 curriculum committee, who brought up the issue of
10 teaching creationism in June, said he would approve
11 the biology textbook, the 2004 edition of Prentice
12 Hall *Biology*, only in conjunction with a companion
13 text that teaches intelligent design. Did I read that
14 correctly?

15 A. Yes.

16 Q. Now, intelligent design is in quotes. Is
17 that a phrase that Bill Buckingham used?

18 A. Yes, it is.

19 Q. And he said that he would only approve the
20 biology text in conjunction with that companion text?

21 A. Yes, he did.

22 Q. Now, in that next paragraph it says,
23 Buckingham proposed a book titled *Of Pandas and*
24 *People: The Central Question of Biological Origins*.
25 Is this the first reference that you heard at a school

1 board meeting to the book *Of Pandas and People*?

2 A. Yes, it is.

3 Q. And then later on in the highlighted passage
4 it talks about how there was a tie vote on the biology
5 book.

6 A. Yes, there was.

7 Q. Matt, if you could highlight the second set
8 of passages. And under deadline it says, Buckingham
9 proposed waiting to approve the Prentice Hall *Biology*
10 until the other book had been reviewed. However, a
11 delayed vote would have meant that the students and
12 teachers would not have a biology text for the new
13 year. Is that something that became clear during that
14 meeting?

15 A. Yes, it is.

16 Q. So both Mr. Buckingham proposed waiting,
17 that was clear?

18 A. Yes, he did.

19 Q. And it was clear that if, in fact, they
20 didn't approve that biology book, the students would
21 not have it in time for the new school year?

22 A. Yes, I believe that was a concern.

23 Q. Now, in that next paragraph there's a quote
24 attributed to Jeff Brown. And it reads, quote, I
25 don't like blackmail, I don't like it that if we don't

1 approve this other book, then that means no book, end
2 quote, said a visibly upset Jeff Brown.

3 Now, the fact that that passage is in
4 quotation marks, does that mean that's a verbatim
5 quote of what he said at that meeting?

6 A. That's correct.

7 Q. And then in the next two paragraphs there's
8 reference to a Joshua Rowland?

9 A. That's a typo. Yeah, Joshua Rowand.

10 Q. And who is he?

11 A. He's the student board representative.

12 Q. And he spoke at that meeting?

13 A. Yes, he did.

14 Q. And in the next paragraph there's a quote
15 that says, In 90 days of class, we only spent one day
16 on evolution, so because of this one issue they don't
17 get new books, end quote. Is that something that he
18 said at that meeting?

19 A. Yes, it is.

20 Q. And do you recall if he spoke during the
21 public comment section?

22 A. No, I believe he spoke during the board
23 discussion, but it was in public.

24 Q. So do the student representatives to the
25 board get an opportunity to present their views?

1 A. Not typically, but in this case they did
2 allow it. Actually, I think they always -- they don't
3 typically speak, but I think they always allow them to
4 if they have a comment.

5 Q. And in the next paragraph it says,
6 Buckingham maintained that the books should only be
7 approved together, saying, quote, We have an
8 opportunity to level the playing field, what is
9 everyone so afraid of, end quote. And that quote,
10 again, is verbatim for what you heard Mr. Buckingham
11 say?

12 A. Yes, that's correct.

13 Q. Now, in that next paragraph it refers to
14 Casey Brown and indicates that she said that as a
15 member of the curriculum committee, she had read the
16 proposed supplemental text from cover to cover and
17 that she didn't believe it fit with the district's
18 curriculum, was not sure about the concept of
19 intelligent design, and was sure that it contained,
20 quote, bad science, end quote. You recall her saying
21 "bad science"?

22 A. Yes, I do.

23 Q. And you recall her saying that she had
24 reviewed the entire *Pandas* book?

25 A. That's correct.

1 Q. And then in that last set of highlighted
2 paragraphs there it talks about a heated exchange
3 between Yingling -- and who is Yingling?

4 A. Angie Zeigler Yingling. She was a school
5 board member at the time.

6 Q. And it says that she decided to change her
7 vote to move the process forward. And then in that
8 last highlighted paragraph it says, The Prentice Hall
9 *Biology* book was approved five to three. So it was
10 approved because Angie Yingling changed her vote?

11 A. That's correct.

12 MR. WALCZAK: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. WALCZAK:

15 Q. I show you what's been marked as Plaintiffs'
16 Exhibit 808. Do you recognize this?

17 A. I do.

18 Q. And what is it?

19 A. It's an article that I wrote regarding the
20 August 2nd board meeting that ran on August 3rd, 2004.

21 Q. And did this run as a companion piece to the
22 article we just looked at?

23 A. It did.

24 Q. Now, Matt, if you could highlight that
25 second paragraph. Now, again, it makes reference to

1 Robert Boston at Americans United for Separation of
2 Church and State and says that they're inviting a
3 lawsuit. Now, did you talk to Mr. Boston again, or is
4 this --

5 A. It's creating a context for the next
6 sentence. So I did not speak to him again.

7 Q. In the next sentence there you say, William
8 Buckingham said he has received a letter from
9 Americans United threatening to sue?

10 A. Yes.

11 Q. And did he say that during the public
12 meeting?

13 A. I can't recall that, to be honest. It was
14 either during the public meeting or directly after
15 when I was asking him questions.

16 Q. But he made reference to a letter that he
17 had received from Americans United threatening to sue?

18 A. Yes, he did.

19 Q. And did you ever see that letter?

20 A. No, I didn't.

21 Q. So he didn't share that letter with you
22 after the meeting?

23 A. No, he didn't.

24 Q. If you could look at the second -- middle of
25 the second column, the paragraph says, Buckingham said

1 that the Thomas More Law Center had recommended the
2 text *Of Pandas and People*. Do you see that?

3 A. Yes.

4 Q. Is that something he said during the
5 meeting?

6 A. After the meeting.

7 Q. So he said that to you?

8 A. Yes.

9 Q. And he identified the Thomas More Law
10 Center?

11 A. Yes, he made reference to some sort of
12 counsel during the meeting but didn't say specifically
13 who it was, so I went up to him after the meeting to
14 ask him more questions.

15 Q. And he did, at that time, disclose to you
16 the identity of this other counsel?

17 A. Yes, he did.

18 MR. WALCZAK: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. WALCZAK:

21 Q. I show you an exhibit marked as Plaintiffs'
22 Exhibit 809. Do you recognize this?

23 A. I do.

24 Q. Is this a September 8th article that you
25 wrote about the September 7th Dover board meeting?

1 A. It is.

2 Q. Matt, if you could highlight the paragraph
3 beginning at the bottom of the first column going down
4 the second column. Now, in the middle of that second
5 column you have, Mr. Buckingham said it is important
6 to distinguish between the concept of creationism,
7 which refers to God, and the creation story in the
8 Bible and intelligent design, which states that some
9 being caused life to begin somehow. He said the
10 distinction is important because intelligent design is
11 not specific to one religion.

12 A. Yes.

13 Q. So Mr. Buckingham, sometime during that
14 meeting, made those comments?

15 A. Yes, he did, specifically to me after the
16 meeting.

17 Q. So it was not during the meeting?

18 A. No.

19 Q. And do you recall him using the term
20 "creationism"?

21 A. Yes.

22 Q. And then in the third column there's a
23 subheading, Residents speak out. Is that you
24 reporting on what residents said during the public
25 comment portion of the meeting?

1 A. Yes, it is.

2 Q. And there's a quote attributed to an Andrea
3 Heilman, identifies her as a resident, and it says,
4 quote, I am responsible for my children's religious
5 education, not some public educator. And then it
6 continues, We need to let educators educate and let
7 parents and religious leaders nurture, end quote. Did
8 I read that correctly?

9 A. Yes, you did.

10 Q. And since that's in quotes, that's verbatim
11 what you heard somebody get up and say?

12 A. Yes, that's correct.

13 Q. And that would have been an Andrea Heilman?

14 A. Yes.

15 Q. And how did you know her name was Andrea
16 Heilman?

17 A. She identified herself for the record, but I
18 also went up to her after the meeting to verify her
19 name and the spelling of her name.

20 Q. So she specifically talked to the board
21 about her children's religious education?

22 A. Yes.

23 Q. And how she should -- she's the one who
24 should be responsible for her children's religious
25 upbringing?

1 A. That's what she said, what I wrote.

2 Q. And then you have a quote attributed to
3 another woman there, Irene Jurvale-Austen. Is that
4 somebody who also made comments during the public
5 comment portion of the meeting?

6 A. Yes, she did.

7 Q. And it says that she is a biology teacher
8 for 35 years at the high school level and at York
9 College and Millersville University, and then it reads
10 that she said in all her years of teaching evolution,
11 she had never seen a student or adult lose faith in
12 God after learning about Darwin and the theory of
13 natural selection. Is that something she said during
14 her comments?

15 A. Yes.

16 Q. And then you have a quote from her. It
17 reads, I wonder what the motivation in bringing in the
18 *Pandas* book; if it is evangelism in the public
19 schools, then it is inappropriate, she said. It's a
20 faith issue. To teach it as science is a perversion,
21 end quote. Again, that's a direct quote of what she
22 said to the board?

23 A. Yes.

24 Q. And she said that during the public comment
25 portion of the meeting?

1 A. That's correct.

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

3 THE COURT: You may.

4 BY MR. WALCZAK:

5 Q. I'm sorry, I'm going to direct you to
6 another exhibit, 813.

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

8 THE COURT: You may.

9 BY MR. WALCZAK:

10 Q. I show you what's been marked as Plaintiffs'
11 Exhibit 813. Is this something you wrote?

12 A. Yes, it is.

13 Q. Now, I believe you testified earlier that
14 you were not able to attend the October 18th board
15 meeting?

16 A. That's correct.

17 Q. And do you recall why that was?

18 A. I had another -- I don't remember who it
19 was, but I had another school board or municipality
20 that had a meeting on the same night, and the editor
21 decided to send me to the other meeting.

22 Q. And did they then, the next morning, ask you
23 to write an article?

24 A. Yes, they did.

25 Q. So you tried contacting some people on the

1 morning of the 19th?

2 A. That's correct.

3 Q. And in the first five or six paragraphs, you
4 make reference to Casey Brown. Did you speak with
5 Ms. Brown on the morning of the 19th?

6 A. I did.

7 Q. And you have a quote attributed to her about
8 halfway down that first column, and it reads, quote,
9 There seems to be a determination among some board
10 members to have our district serve as an example to
11 flout the legal rulings of the Supreme Court, to flout
12 the law of the land. They don't seem to care. I
13 think they need to ask the taxpayers if they want to
14 be guinea pigs, end quote, Casey Brown said this
15 morning. Is that something she said to you?

16 A. It is.

17 Q. And that's a verbatim quote?

18 A. Yes.

19 Q. And then towards the bottom of that column
20 you have another quote attributed to her. Quote, It's
21 a waste of money, how do we answer to the taxpayers,
22 we are committing the district and taxpayers to a
23 no-win fight. I believe if you want to make a change,
24 you go to the legislature, end quote, she said.
25 Again, is that a direct quote attributed to her?

1 A. It is.

2 Q. At the bottom of the second column you make
3 reference to William Baksa.

4 A. Yes.

5 Q. And then in there you say that the
6 administration and teachers offered an alternative
7 curriculum recommendation that did not make specific
8 reference to intelligent design. Is that correct?

9 A. Yes.

10 Q. And is that something Mr. Baksa told you the
11 next morning, the morning after the board meeting?

12 A. That's correct.

13 Q. And then if you'll turn the page, in the
14 first two paragraphs there, you make reference to
15 Nilsen and Baksa. Did you speak with both of them?

16 A. I did.

17 Q. That would have been the morning of the
18 19th?

19 A. Yes.

20 Q. And there it says that they told you that
21 they were not sure how the new wording would be
22 applied. Is that correct?

23 A. Yes, that's correct.

24 Q. And that they would be meeting with the high
25 school science department to develop specific language

1 that would be used in each class to introduce the
2 curriculum. Is that correct?

3 A. Yes, that's correct.

4 Q. And then there's a quote attributed to
5 Mr. Baksa: *Of Pandas and People* would still be used
6 only as a reference text, and added that the teachers
7 would not spend a lot of class time teaching
8 intelligent design but would only introduce the
9 theory.

10 A. Yes.

11 Q. Actually, I guess the only thing that's in
12 quotes is the book. Is that right?

13 A. Right, that's just something he said, yeah.

14 Q. But he said the teachers would not spend a
15 lot of class time teaching intelligent design?

16 A. Right, he said something to that effect.

17 Q. And do you recall him talking about teaching
18 intelligent design?

19 A. I don't know whether he used that word or if
20 my question was to him, how are you going to teach
21 this if you've made it part of the curriculum. But it
22 would have been either him saying that or in response
23 to my question.

24 Q. Now let's turn to Exhibit 810, which I
25 believe I gave you just a moment ago. Do you

1 recognize this exhibit?

2 A. I do.

3 Q. And this is an article you wrote about the
4 November 1st Dover School Board?

5 A. Yes.

6 Q. Matt, if you could highlight the first
7 paragraph. In that first paragraph you write that
8 Dover Area School Board's decision two weeks ago
9 requiring intelligent design theory to be included as
10 a high school biology reference text dominated last
11 night's board meeting with former board members
12 criticizing the move and one denouncing others on the
13 panel and quitting the meeting.

14 Is that an accurate characterization of what
15 happened that night?

16 A. Yes, it is.

17 Q. So most of the meeting was, in fact,
18 dominated by a discussion of intelligent design?

19 A. That's correct.

20 Q. Now, the next two paragraphs there, it
21 refers to Noel Wenrich.

22 A. Yes.

23 Q. And he made comments during the public
24 comment section of the meeting?

25 A. Yes, he did.

1 Q. So he had resigned already?

2 A. He had resigned, but this would have been
3 his last meeting as a board member.

4 Q. And when he made these comments, do you
5 recall whether he made them while sitting as a board
6 member or did he make them from somewhere else?

7 A. He made them from the podium where the
8 public makes their comments.

9 Q. And was that unusual for a board member to
10 make comments from there?

11 A. Yes.

12 Q. And you write there that Wenrich said that
13 he and residents in the audience have been personally
14 attacked and insulted at the last meeting by
15 Buckingham and by the board. Did he say words to that
16 effect?

17 A. Yes, he did.

18 Q. So that's an accurate characterization of
19 what he said?

20 A. Yes, it is.

21 Q. And then you have a quote attributed to him.
22 Could you read that quote, please?

23 A. (Reading:) I was referred to as
24 unpatriotic, and my religious beliefs were questioned.
25 I served in the U.S. Army for 11 years and six years

1 on this board. Seventeen years of my life have been
2 devoted to public service, and my religion is
3 personal. It's between me, God, and my pastor.

4 Q. And that's in quotes?

5 A. Yes.

6 Q. So that would have been a verbatim quote of
7 what Mr. Wenrich said?

8 A. That's correct.

9 Q. Now, there's some ellipses in there?

10 A. Yes.

11 Q. Did you leave some things out?

12 A. Yes, I did.

13 Q. Was there anything pertinent you left out?

14 A. I believe it was repetitious, so no.

15 Q. And if you could look at the first two
16 paragraphs in the second column. It says, Board
17 President Alan Bonsell told Wenrich he was out of line
18 in making comments of a personal nature which he had
19 asked the public to avoid at the beginning of the
20 meeting, saying that he was disappointed in the
21 conduct of some board members and residents at the
22 meeting two weeks ago.

23 Is that an accurate paraphrasing of what
24 Mr. Bonsell said?

25 A. Yes, it is.

1 Q. And then it says, Mr. Wenrich was asked to
2 leave the podium?

3 A. Yes.

4 Q. Who asked him to leave the podium?

5 A. Mr. Bonsell.

6 Q. And Mr. Bonsell was the board president at
7 the time?

8 A. Yes, he was.

9 Q. And then you have a quote that you write
10 that Mr. Wenrich shouted from the front of the room
11 that he had enjoyed his service but could, quote, no
12 longer sit with these people, end quote. That's a
13 verbatim quote?

14 A. Yes.

15 Q. And when you say that he shouted from the
16 front of the room, is that where the exit would have
17 been?

18 A. No, the exit was at the back of the room.

19 Q. So he went back to his seat at the table, or
20 did he leave the meeting?

21 A. He went back to his seat at the table, and I
22 believe he got his coat and then said what he said and
23 then left the meeting.

24 Q. And then at the bottom of that second column
25 you make reference to Casey Brown and Larry Snoke.

1 We've talked about Casey Brown. Who is Larry Snoke?

2 A. He is also a former school board member that
3 attends most of the meetings.

4 Q. And in that first paragraph in the third
5 column you write that Snoke said the board was
6 dividing the community.

7 A. Yes.

8 Q. And do you remember Mr. Snoke using the word
9 "dividing"?

10 A. Yes, I believe he did.

11 Q. And then in that next paragraph you wrote
12 that Brown suggested that the board rescind its
13 decision on intelligent design but offer an elective
14 class on religions of the world so that students could
15 be exposed to all of the world's faiths. Is that
16 correct?

17 A. Yes.

18 Q. And she was no longer on the board at this
19 time?

20 A. That's correct.

21 Q. So she stood up as a resident and made this
22 during public comment?

23 A. Yes, she did.

24 Q. If you could look down two paragraphs from
25 there, and it says, The decision. Do you see where

1 I'm at?

2 A. Yes.

3 Q. And the decision you're referring to, the
4 decision to add intelligent design theory to the
5 curriculum?

6 A. Yes.

7 Q. And it reads, The decision could make Dover
8 a national test case over what can be taught in public
9 schools. Did somebody say that?

10 A. That's my -- that's my writing, but that's
11 in reference to things that were said by board
12 members. Casey Brown had said something to that
13 effect. I'm not sure of the order of this, but in
14 another article I had interviewed some people from the
15 National Science Center for Education in Oakland.
16 They had said something to that effect.

17 Q. So this is not your commentary on --

18 A. It's based on the content of other
19 conversations I had had.

20 Q. Pretty prescient comment, wouldn't you
21 agree?

22 A. Yeah.

23 MR. WHITE: Objection.

24 MR. WALCZAK: I have no further questions.

25 THE COURT: We'll sustain the objection to

1 the last question, strike that last answer, and you
2 may cross.

3 I don't know, I'll just interject at this
4 point, I'm willing to stay until 5:00 to get as much
5 as we can in, but I don't know if we're going to get
6 both reporters done.

7 I trust that doesn't present a problem if we
8 have to come back, unless you want to break now,
9 Counsel. But I'll stay -- we typically, as you know,
10 have ended our days at 4:30, but --

11 MR. WHITE: Your Honor, since we will be
12 coming back for Maldonado tomorrow, it might be a good
13 idea to get it all done tomorrow.

14 THE COURT: Mr. Benn, does that present a
15 problem for you?

16 MR. BENN: That will be fine.

17 THE COURT: Why don't we then end our trial
18 day here. It's probably an opportune time to do that
19 to give you the time that you need without compressing
20 it at the end of the day today, and we will reconvene
21 and pick up your cross-examination at 9:00 a.m.
22 tomorrow. Anything else for today?

23 MR. BENN: No, Your Honor.

24 THE COURT: All right. We'll be in recess
25 until 9:00 a.m. tomorrow.

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(Whereupon, the proceedings were adjourned.)

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CERTIFICATION

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

Dated in Harrisburg, Pennsylvania, this 9th day of November, 2005.

/s/ Lori A. Shuey
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