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

Tammy J. Kitzmiller, et al., :
: :
vs : 4:04-CV-2688
: :
Dover Area School District; :
Dover Area School District :
Board of Directors :

BEFORE: Honorable John E. Jones III
PLACE: Harrisburg, Pennsylvania
PROCEEDINGS: Non-Jury Trial
DATE: Friday, October 28, 2005;
9:00 a.m.

APPEARANCES:

For the Plaintiffs: ERIC J. ROTHSCHILD, ESQ.
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For the Reporters: NILES BENN, ESQ.
TERENCE J. BARNA, ESQ.
TRACI L. McPATE, ESQ.

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1 (9:00 a.m., convene.)

2 THE COURT: Good morning to all, and we continue
3 with testimony of our last witness yesterday, and she may
4 retake the stand.

5 MR. BENN: Your Honor, excuse me, I was a little
6 remiss yesterday when I introduced myself as counsel on
7 behalf of the reporters. I would also like to introduce my
8 two co-counsel, put them on the record as well, Terence
9 Barna --

10 THE COURT: Ma'am, you can take the stand while
11 he's doing this.

12 MR. BENN: Terence Barna and Traci McPate, both
13 from my office.

14 THE COURT: Very well, we'll note their
15 appearances.

16 And you may commence your cross examination.

17 CROSS EXAMINATION

18 BY MR. WHITE:

19 Q Good morning.

20 A Good morning.

21 MR. WHITE: I'm sorry, Your Honor, but the screws
22 just popped out of your microphone.

23 THE COURT: Technical malfunction. We could ask
24 Mr. Thompson to hold the microphone, but that would probably
25 be beyond the call of duty.

1 (Pause.)

2 MR. WHITE: Job for GSA. Maybe if I can just rest
3 it.

4 THE COURT: That will probably work. We re all
5 set. After that auspicious start to our Friday, you may
6 proceed.

7 MR. WHITE: I promise I won t touch anything else.

8 THE COURT: All right.

9 BY MR. WHITE:

10 Q This is a continuation from your testimony
11 yesterday; you re still under oath.

12 Your full-time job is stay-at-home mom, correct?

13 A That s correct.

14 Q And you have two young children, a three and a half
15 year old and an eight month old.

16 A Right.

17 Q And your freelance writing is a way to supplement
18 your income.

19 A That s correct.

20 Q The Dispatch pays you about 40 or \$50 per story?

21 A That s correct.

22 Q And you write about six to ten articles a week?

23 A Yes.

24 Q Now, you read the editorial page of the York
25 Dispatch, correct?

1 A Yes.

2 Q So you understand the position the Dispatch takes
3 on various issues?

4 A It would depend on the editorial but, yes, and on
5 the writer.

6 Q So the answer is yes?

7 A I would say that I understand positions taken by
8 the various writers, the various editorial writers.

9 Q You get your assignments from the editors of the
10 York Dispatch also, correct?

11 A In a sense. I have general assignments wherein I
12 cover the meetings of, like I said yesterday, two
13 municipalities and a school board. It s been varying
14 amounts of school boards and municipalities. So in that
15 sense I have the general assignment I go to the meetings and
16 report on what happened.

17 Sometimes I will be assigned particular things by
18 the editors. Those are usually features. For instance, I
19 did a story on a girl that was doing a motorcycle ride for
20 Cystic Fibrosis that she put together in honor of her father
21 who just died, that kind of thing.

22 Q But sometimes the editors tell you what they re
23 interested and what they re not interested in as it relates
24 to stories, correct?

25 A Only in the sense that -- like, for instance, after

1 a meeting, I m call them and say hey, this is what happened
2 at meeting, and they ll tell me what they re interested in,
3 what they have space for the next day in the paper, what I
4 can wait to write the next day; in that sense they do.

5 So that s more of an issue of planning and how much
6 space they have in the paper, that kind of thing.

7 Q And then you write the stories that are of interest
8 to the editors as a result of that.

9 MR. BENN: Objection, Your Honor. I think the
10 nature of your Court order relates to the fact that we re
11 supposed to be asking questions as it pertains to the
12 articles in issue, and not in terms as to what the editors
13 think, what the newspaper s position is, but rather what it
14 is that Ms. Bernard-Bubb wrote.

15 MR. WHITE: Yesterday there was some questioning
16 about her assignments and her beat, that s why I was asking
17 these questions.

18 THE COURT: Well, you re right on the line,
19 Mr. White, as it relates to my order and the parameters of
20 your permissible areas of inquiry.

21 I ll allow that question, but I think colorably
22 you re getting into what I think may be a bias type of
23 examination. And I m going to sustain objections if it goes
24 much farther. But I ll overrule that objection, I ll allow
25 an answer.

1 BY MR. WHITE:

2 Q So the answer -- the question was then that you
3 sometimes write -- you write stories that are sometimes of
4 interest to the editors after you've had these meetings with
5 the editors, correct?

6 A I wouldn't say that would be a correct
7 characterization. I would just say that I call them, they
8 tell me what they're interested in for the next day. Like I
9 said, it's more an issue of how much space they have in the
10 paper, what can wait a few days, what they would like for
11 the story -- what stories they would like for the next day's
12 paper.

13 Q Now, although yesterday you were asked a question
14 that you haven't been in the courtroom here previously, but
15 you've been following this case in the papers?

16 A Yes.

17 Q Now, when you go to these meetings of the Dover
18 School Board, in particular, I know you have other beats,
19 but that's all I'm concerned about so when I talk about
20 school board meetings I'm talking just about Dover.

21 A Okay.

22 Q You don't tape record the meetings, do you?

23 A I do not.

24 Q You don't video record the meetings, do you?

25 A No, I do not.

1 Q So when you go to these meetings, you re just
2 taking handwritten notes of what s taking place, right?

3 A That s correct.

4 Q And you don t write down everything that was said
5 at the meetings, do you, in these notes?

6 A No, not everything that s said.

7 Q Okay. You don t write down verbatim statements of
8 everything that was said at the meetings either, do you?

9 A I try to as much as possible. That gives me the
10 most accurate picture for writing later, but obviously I
11 don t get down every single word.

12 Q In other words you sometimes have to summarize in
13 your notes what s taking place at these meetings?

14 A I sometimes -- can you rephrase the question? I m
15 not sure I understand what you re asking.

16 Q You said that you can t take down verbatim
17 everything that s said in these meetings.

18 A Right.

19 Q So sometimes you have to summarize in your notes
20 what s taking place.

21 A I wouldn t say I summarize. Sometimes the
22 statements that I write down may not be complete statements
23 but it s still a pretty specific reference to what was said
24 or words that were used, that kind of thing, but I might not
25 get every single word of a statement, particularly if it s a

1 lengthy statement or if it s repetitious.

2 Q And you don t have any of the people who you re
3 quoting in your notes verify the accuracy of the quotes
4 you ve attributed to them in your notes, do you?

5 A That s correct. The only time I would follow up
6 with someone is if I was confused by what they said, I
7 didn t hear it correctly, if I wanted to verify to make sure
8 I understood. But if it s something that is repeated
9 numerous times or that I ve heard clearly, I don t feel any
10 need to check for accuracy because I ve heard it.

11 Q And you still have your notes from the 2004 school
12 board meetings, right?

13 A That s correct.

14 Q But the defendants have been prevented from seeing
15 those notes, right?

16 A That s correct, by order of the Court.

17 Q Now, the Dover Area School Board meetings, they
18 generally last a couple of hours?

19 A Yeah, two to three hours I would say.

20 Q Now, sometimes do you step out of the meetings to
21 go to the bathroom?

22 A I usually try to only do that during breaks,
23 sometimes they would take breaks, particularly if it was a
24 lengthy meeting.

25 Q You sometimes go out of a meeting to conduct an

1 interview with someone who had spoken during the meeting
2 while the meeting is going on?

3 A Occasionally, but usually I try to do that after
4 the meeting s been completed so that I m not missing any of
5 the business that s going on. Sometimes if someone has
6 spoken, if it s a resident or someone, I might step away
7 during a fairly benign, like if they re going through the
8 hirings and firings and people who are taking leaves of
9 absence, that kind of thing, I might step away to make sure
10 I ve got someone s name and where they re from, that kind of
11 thing.

12 Q So the answer to my question is sometimes you do
13 step out of the meeting.

14 A Infrequently.

15 Q Now, during the school board meetings there are
16 several topics that are usually discussed, correct?

17 A That s correct.

18 Q And many people speak at these school board
19 meetings?

20 A Can you clarify what you mean by that?

21 Q Well, school board members are talking, people from
22 the public are talking when it s their time to talk,
23 correct?

24 A That s correct, it s primarily school board
25 members, but sometimes there s a lot of residents depending

1 on what s going on.

2 Q And when the school board members are speaking or
3 the residents are speaking, they re not under oath or
4 anything, are they?

5 A No.

6 Q And sometimes after meetings you go up to people
7 and you speak to them as well, correct?

8 A Yes.

9 Q Okay. And these people aren t under oath either
10 when you re talking to them?

11 A No, I don t ask them to take an oath.

12 Q Now, the articles you write about school board
13 meetings, they don t describe everything that took place
14 during those two to three hour meetings, do they?

15 A No.

16 Q And the articles you write about the school board
17 meetings sometimes don t include all the statements that
18 were made by people at those meetings either?

19 A That s correct, I m not a court reporter.

20 Q The articles you write about school board meetings
21 don t include all of the comments then that people made
22 while the various topics were being discussed at the
23 meetings, correct?

24 A That s correct.

25 Q And your articles also that you write, including

1 the ones we talked about yesterday, or that I didn't, but
2 you did with the plaintiff's attorney, those sometimes
3 include statements made to you by people after the meetings
4 have ended, correct?

5 A That's correct.

6 Q And these statements made to you are in response to
7 your questions?

8 A Yes, usually.

9 Q The articles you write about school board meetings,
10 they capture part then of what happened at these meetings?

11 A I would say that when you say part of what
12 happened, for instance at a school board meeting you might
13 have policy change come up, school budget be approved, et
14 cetera. I treat each topic separately, and I try to be as
15 comprehensive about the content of the discussion, the
16 positions that were taken, within each subject area, but
17 certainly it doesn't contain everything that happened at the
18 meeting.

19 Q So then you're the person who then selects what
20 part of the school board meeting you want to feature in your
21 article.

22 A Yes, I have to use my judgment.

23 Q And you then also select which quotes from your
24 notes that you want to include in your articles as well,
25 correct?

1 A That s correct.

2 Q And you also are the one who decides what
3 statements you want to summarize or paraphrase in your
4 articles as well, correct?

5 A Right.

6 Q And the summaries and these statements that you re
7 putting in the articles, this is again your interpretation
8 of what you heard at these meetings?

9 A No, I wouldn t say it s interpretation. It s
10 always, in essence, what they ve said. Like I said
11 yesterday, paraphrasing is mostly a tool to allow you to be
12 concise, and really to make sure that you re accurate.
13 Someone might make a number of comments, and if you were to
14 pick out any one quote, it would be taken out of context and
15 it wouldn t really encompass their entire position. In that
16 case paraphrasing is a really good tool because you can
17 encompass the position that was taken throughout the entire
18 meeting through comments they made, dialogues they had, and
19 questions they answered from residents.

20 Q But that s your paraphrasing, right?

21 A That s right.

22 Q Now, so then in your articles then you re
23 attributing statements of people that are in response to
24 your questions, right?

25 A Excuse me, could you repeat that?

1 Q You re attributing statements to people that are in
2 response to your questions?

3 A Sometimes it s in response to my questions and
4 sometimes it s just what they ve said.

5 Q So sometimes you can ask a question, and if it s a
6 yes or no question, the answer or the statement in the
7 article wouldn t just say yes, it would be an affirmation of
8 your question?

9 A Do you have a specific -- that s difficult to say.
10 Most of the time when I ask people questions, it s not just
11 a yes or no answer. And usually when I ask a question I try
12 to create the context within the article to say, you know,
13 in response to or kind of like a lead in to it so that the
14 reader knows what the issue is.

15 Q That s the -- that s based on your writing style
16 and how you re trying to make an article flow?

17 A Yes, that s correct.

18 Q Now, after you write an article, you don t have the
19 person you quoted in the article verify the accuracy of the
20 quote, do you?

21 A No, not unless I have any question about it, but
22 no.

23 Q And after you write an article, you don t have the
24 person you quote in the article verify the accuracy of the
25 context in which you ve placed that quote, do you?

1 A No, that s correct.

2 Q And after the article is written, you don t have
3 the person whose statements you ve paraphrased or summarized
4 verify the accuracy of that paraphrasing?

5 A No, again, it comes directly from the meeting, so I
6 don t feel I need to.

7 Q After you write an article you don t have the
8 person whose statements you summarized or paraphrased verify
9 the context in which you ve used that paraphrased statement,
10 right?

11 A No.

12 Q So these articles you re writing, again, they are
13 filtered through you, your perceptions of what s happening
14 at the meeting, correct? As you said, you re not a court
15 reporter.

16 A Sure, in a sense they -- in a sense you can say
17 that. I mean what -- I m reporting on what happens, though,
18 and what the conversation is.

19 Q But as any reporter, you re reporting it from your
20 own perspective, correct?

21 A Sure.

22 Q Now, after you write an article you submit it to
23 editors for your paper.

24 A Yes.

25 Q And you don t necessarily know which editor is

1 going to edit the paper, correct?

2 A No, I don t know.

3 Q You e-mail it to a group of editors and whoever is
4 on the staff or on call that night, whatever is the correct
5 term, is the one who reviews the article, right?

6 A Right.

7 Q Now, the editor who edits your paper, that person
8 wasn t at the school board meeting, was he?

9 A No.

10 Q And editors can make changes to your articles,
11 correct?

12 A In my experience they make very few changes.
13 Sometimes, as we looked at in the June 8th article, they
14 might add something to create context. If they -- they
15 very -- I ve never had an experience of them editing
16 content.

17 If they ever have a question, maybe I wrote a
18 sentence that was awkward or confusing, they d call me the
19 next morning and say, hey, this is confusing or too long,
20 how can we say it better, and we work on it together so that
21 I make sure that the content is -- accurately reflects what
22 I heard and what I saw at the meeting the day before.

23 Q Now, maybe I misunderstood you, but at the start of
24 your testimony yesterday, and I don t have a copy of your
25 transcript, but I thought you had said that editors don t

1 add anything to your articles?

2 A No, they don't add anything content wise. Like I
3 said, there are instances -- and let me be more specific
4 about it, maybe I wasn't articulating myself well. Things
5 that I've actually written, they're not adding to or
6 changing without my knowledge and without basically they
7 call me up and say, hey, this is awkward and long and,
8 again, it usually has nothing to do with content.
9 Occasionally they'll call and say, hey, you forgot the date,
10 or are you sure this is the right spelling. It's usually
11 that kind of thing.

12 Occasionally it's more of a stylistic issue, but I
13 might write a sentence that is long or awkward, and they
14 might say, hey, what's a shorter way we can say this, this
15 is too long. It would be something of that nature, but I
16 think I was accurate in saying that they don't change the
17 content of what I wrote.

18 Q So the editor expects you to have the content
19 correctly, correct?

20 A That's right.

21 Q Now, based upon the content of your article, then
22 the editor writes the title for the article.

23 A Right.

24 Q And then the editor also, based upon how you've
25 described what occurred, writes the subtitles?

1 A Yes, that s correct.

2 Q And then based upon the content of the article, how
3 you wrote it, for example on exhibit 804, the article we
4 talked about yesterday, an editor would then add the
5 paragraph about the Supreme Court decision, and then
6 interview over the phone the ACLU attorney, correct?

7 A Yes, they chose to do that.

8 Q Now, exhibit 804, do you have that handy?

9 A I do.

10 Q That s the article that deals with the June 7th,
11 2004 school board meeting?

12 A That s correct.

13 Q Now, according to the article, the debate was over
14 a textbook that involved the subject of creationism, right?

15 A No, that s not exactly correct. It was a debate
16 over a biology text that contained evolution, and
17 creationism was brought up at the meeting.

18 Q Creationism was brought up as something that was
19 missing then, according to you, from this biology textbook.

20 A I m sorry, are you looking at a particular
21 statement?

22 Q I m looking at the -- right now I m looking at the
23 title where it says, "Dover Debates Evolution and *Biology*
24 TextBook; book on hold because it doesn t address
25 creationism."

1 A I didn t write that, but based on the content of
2 the article, they were looking for something else to balance
3 evolution, and creationism was the thing that was mentioned
4 at the meeting.

5 Q Now, this -- this debate dealing with the textbook
6 on June 7th, that lasted a while, didn t it?

7 A Yes, it did.

8 Q And several people spoke about the subject,
9 according to your article?

10 A Yes.

11 Q And also according to your article, school board
12 members spoken about the article?

13 A Spoken about the article or --

14 Q Excuse me, spoke about the subject of the textbook?

15 A Yes.

16 Q And also according to your article, school
17 officials such as Mr. Nilsen and Baksa also spoke on the
18 subject?

19 A That s correct.

20 Q And as well, did people in the public speak about
21 it?

22 A That s correct.

23 Q Now, in the first page, column three, that s the
24 quote from Paula Knudsen, I believe you pronounce her name,
25 that the editor added to your article?

1 A That s correct.

2 Q And that was an interview the editor had with a
3 Paula Knudsen?

4 A Yes.

5 Q And in that section of this article, in quotes, is
6 a statement from her where the word creationism is quoted,
7 right; second paragraph on the third column?

8 A Yes.

9 Q And the editor had conducted the interview with
10 her, Paula Knudsen, after receiving your draft article,
11 right?

12 A That s correct.

13 Q And --

14 A That s my understanding.

15 Q Now, on the second page of your article, you have a
16 quote at the top from resident Max Pell, who was at the
17 school board meeting, right?

18 A Yes, that s correct.

19 Q And quoted in that statement you have the word
20 creationism, right?

21 A Yes.

22 Q Okay.

23 A That s the word he used.

24 Q And that s how you wrote the statement down in your
25 notes?

1 A Yes.

2 Q Now, the quotes dealing with -- and you can review
3 the article -- the quotes dealing with Knudsen and Pell,
4 those are the only two quotes in the article that include
5 the word creationism, am I right?

6 A Let me review that.

7 Q Sure.

8 A Yeah, I believe those are the only direct quotes.

9 Q And you include a statement in quotes when you re
10 sure about the accuracy of the quotes, right?

11 A No, that wouldn't be accurate to say. I include
12 quotation marks when I'm sure that I've gotten it down
13 verbatim. But whether or not I'm attributing it to them
14 with paraphrasing or through a direct quote, I'm sure about
15 the accuracy.

16 Q Well, my question is then, when something is in
17 quotation marks in your article, you're sure about the
18 accuracy of that statement?

19 A Yes.

20 Q Word for word?

21 A Yes.

22 Q There's not a word missing or anything like that,
23 right?

24 A Right.

25 Q Okay. And then if the statement isn't quoted then

1 it s a summary of what went on at the meeting, right?

2 A It s based on the content of the conversation.

3 Q Now, also on page two of this article, you
4 interviewed after the meeting then Bill Buckingham and Mike
5 Baksa --

6 A That s correct.

7 Q -- correct? And on page one of the article, you
8 have quotes -- in quotation marks from Bill Buckingham and
9 Noll Weinrich in the first column?

10 A Yes, that s correct.

11 Q And those are statements dealing with evolution
12 that they had made at the June 7, 2004 meeting?

13 A Yes, that s correct.

14 Q So having reviewed the article now, just now,
15 exhibit 804, the only time the term creationism is
16 attributed to a school board member or a school official is
17 only in a summary statement that you ve made, right?

18 A Yes, that s correct, based on the content of the
19 discussion.

20 Q Again, it s not in quotes, it s a summary, right?

21 A It s what was said at the meeting, but it s a
22 summary of what was said at the meeting.

23 Q So nowhere in the article do you have quoted a
24 statement from a school board member where the word
25 creationism is used in quotation marks.

1 A Right, not a direct quote.

2 Q And nowhere in the article do you have quoted a
3 statement from a school official where the word creationism
4 is used in that quote, correct?

5 A Right, not a direct quote, but it --

6 Q And this is true even though one of the big
7 subjects of discussion at this meeting was the use of the
8 term creationism, right?

9 A That s correct.

10 Q Okay. And now, you didn t verify the accuracy of
11 any quotes with the people you quoted in this article,
12 correct, after you -- or before you drafted the article?

13 A I didn t need to. I heard them say the things they
14 said.

15 Q Did you -- I didn t get the answer.

16 A Oh, okay, I m sorry. I said I didn t need to, I
17 heard the things that I wrote.

18 Q And you didn t verify the accuracy of any
19 statement, whether it s quoted or not, with the person to
20 whom you attributed the statement to, correct?

21 A I m sorry, can you rephrase that?

22 Q You didn t verify the accuracy of any statement,
23 whether it was quoted or not in your article, in quotation
24 marks, with the person to whom you attributed that
25 statement, correct?

1 A Right.

2 Q Okay. Nor did you verify the accuracy of the
3 context in which you placed the statement with the person
4 who you say made the statement, correct?

5 A I didn t need to because I heard it.

6 Q I just asked you a yes or no; you didn t verify
7 context with people, did you?

8 A No, I didn t need to.

9 Q If you can turn to the next exhibit, please, it was
10 805. This is a follow-up article to the June 7th, 2004
11 school meeting?

12 A That s correct.

13 Q And since it s a follow-up article, is this
14 something that the editors would have asked you to do?

15 A Yes, they did.

16 Q Now, the point of this article is a possible
17 lawsuit over a textbook that teaches both evolution and
18 creationism, is that correct, as stated in the first column?

19 A Yes.

20 Q And the article, since it s June 7th, the date
21 it s -- or excuse me, June 9th, the date it s published,
22 this article is based on notes that you took from the
23 June 7th, 2004 meeting?

24 A It s based on both notes from the June 7th
25 meeting and then also a few interviews that I conducted on

1 June 8th.

2 Q The day after the meeting?

3 A That s correct.

4 Q And in your article, page one, column one and two,
5 you have quotes and summaries from statements made by Robert
6 Boston of Americans United, the separation of church and
7 state?

8 A Yes, that s correct.

9 Q And in his quote you attribute to him at the top of
10 the second column on page one, in the quote is the word
11 creationism, correct?

12 A Yes, that s correct.

13 Q And you conducted this interview with Mr. Boston
14 over the telephone?

15 A Yes.

16 Q And he wasn t at the June 7th school board
17 meeting?

18 A No, he wasn t.

19 Q So Mr. Boston is responding to questions you re
20 posing to him during the interview?

21 A Right, that s correct.

22 Q In your article you referred to, on page one, Bill
23 Buckingham and Noll Weinrich, correct?

24 A Yes.

25 Q But you don t have anything in direct quotes from

1 those people in this article.

2 A No, I m paraphrasing.

3 Q And also in your article on page two, column one,
4 you have a quote attributed to Michael Baksa talking about
5 the origins of life, right?

6 A That s correct.

7 Q And that was in an interview you conducted with him
8 on the 8th of June.

9 A Yes, that s right, over the phone.

10 Q And also on page two, column two, you have
11 references to Casey Brown, Sheila Harkins and Rich Nilsen,
12 as well, correct?

13 A I know I do Casey Brown. Oh yes, I do, and Richard
14 Nilsen.

15 Q And those, again, were interviews conducted after
16 the school board meeting of June 7th?

17 A That s correct.

18 Q And again in this article, and you can review it,
19 nowhere in the article do you have a quote attributed to any
20 school board member where the word creationism is used in
21 the quote, correct?

22 A That s correct, in this article.

23 Q And that same holds true with regard to any quotes
24 you have attributed to school officials.

25 A Just a moment.

1 I believe Mr. Baksa -- I m looking at the second
2 page in the first column -- we discussed briefly what would
3 happen if creationism --

4 Q I didn t ask you that question. I asked you do you
5 have in this article any quotes, direct quotes that you
6 attribute to a school official where the word creationism is
7 in quotes?

8 A I m sorry, no, no direct quotes.

9 Q And that s true even though the focus of the
10 article dealt with the subject of creationism in a textbook,
11 right?

12 A Right, that s correct, it was --

13 Q All right, and --

14 A -- it was coming from the meeting on the 7th.

15 Q And --

16 MR. WALCZAK: Your Honor, objection, she s trying
17 to answer the question. This is the third time she s being
18 cut off.

19 MR. WHITE: Your Honor, I m asking her direct
20 questions for yes or no answers. She s editorializing. If
21 Mr. --

22 THE COURT: I don t find it to be necessarily
23 editorializing. I think you are stepping on her answers.
24 I ll throw the flag if I think she s editorializing. Let
25 her finish her answers.

1 MR. WHITE: Okay.

2 BY MR. WHITE:

3 Q In reviewing this article then, the only time the
4 word creationism is in a quote is then with regard to
5 Mr. Boston of Americans United, in response to a question
6 you posed to him during your interview?

7 A That s correct.

8 Q And the only other times creationism is mentioned
9 in this article is part of your summaries or your
10 paraphrasing of what took place at the June 7th meeting
11 according to you?

12 A Right, from the discussion on June 7th.

13 Q And also you didn t verify the accuracy of any of
14 these summaries with the people who you attribute these
15 statements to, did you?

16 A No.

17 Q Nor did you verify the accuracy of any context of
18 these statements with these people within the article?

19 A No.

20 Q Can you turn to exhibit 806, please.

21 Now, according to the title, and I understand you
22 don t write the title, but at least the subtitle it says,
23 "Creationism Draws 100 People to Dover Meeting." That would
24 have been written by the editor of the newspaper, correct?

25 A That s correct.

1 Q How many years have you been covering school board
2 meetings at Dover?

3 A Four years.

4 Q Four years. Have other times there been -- have
5 there been other times where a hundred or so people show up
6 for a meeting?

7 A On a few occasions.

8 Q One of those would have been about the firing of a
9 football coach; do you recall that one?

10 A Yes.

11 Q So occasionally people show up in numbers to school
12 board meetings, correct?

13 A Yes, that s true.

14 Q Now, the debate on June 14th, again, this is your
15 article, exhibit 806, is dealing with the June 14th
16 meeting, right?

17 A That s correct.

18 Q And the debate that went on at this meeting lasted
19 for a while, is that right?

20 A Yes, I believe it was about an hour, hour and a
21 half.

22 Q And several people spoke on the subjects,
23 especially, as you say, of creationism, according to your
24 article?

25 A Yes, that s correct.

1 Q That would be the focus of this meeting, according
2 to your article, correct?

3 A The focus of the meeting is on creationism and on
4 the textbook; that would be the focus of the article.

5 Q If you can review this article, 806, point to any
6 place where you have the word creationism included in a
7 direct quote, not a paraphrasing but a direct quote, that
8 you can attribute to a school board member or to a school
9 official.

10 A I don t believe I do have -- I don t believe I do
11 have one.

12 Q So nowhere in the article is there a direct quote
13 attributed to a school official where the word creationism
14 is used?

15 A No, I certainly have paraphrased sentences because
16 it was repeated throughout the discussion but . . .

17 Q But even though the subject of the meeting, which
18 went on for an hour and a half, dealt with creationism, you
19 didn t have any occasion to include a verbatim quote from a
20 school official or school board member where the use of the
21 word creationism occurred?

22 A That s correct.

23 Q Now, column two, on page two, you were -- which was
24 referred to yesterday, you have a quote from Bill
25 Buckingham, "Nearly 2,000 years (sic) someone died on a

1 cross for us, shouldn't we have the courage to stand up for
2 him?" Now, according to you, Bill Buckingham made that
3 statement at the June 14th, 2004 meeting.

4 A Yes, he did.

5 Q Did he make that statement only once during the
6 June 14th, 2004 meeting?

7 A Yes, only once.

8 Q And you've been covering the school board for, you
9 say, four years?

10 A Yes.

11 Q Do you remember him ever saying that statement
12 previously?

13 A No.

14 Q Now, since you have the statement in the second
15 column of page two in quotes, then you're positive of the
16 accuracy word for word of that statement, correct?

17 A Yes.

18 Q Okay. So if that statement is quoted any
19 differently, that would be inaccurate, correct?

20 A I'm sorry, I don't think I understand your
21 question.

22 Q If this statement you attribute to Bill Buckingham
23 is quoted differently, that would be inaccurate?

24 A I can't speak to that, but that's what I heard.

25 Q But you said that whenever you have something

1 quoted word for word, you re positive that s how it was
2 said, right?

3 A That s what I have written down in my notes, and
4 whenever I quote something verbatim I have it in its
5 entirety in my notes.

6 Q So my question then is, if it s stated differently,
7 that would be not an accurate quote, right?

8 MR. BENN: Your Honor, I think she s already
9 indicated that what she s written is what she s heard. She
10 can t testify in terms as to what somebody else has heard.

11 MR. WHITE: But she can testify if something
12 differs from her statement.

13 THE COURT: I think it was asked and answered, so
14 I ll sustain the objection on that basis.

15 BY MR. WHITE:

16 Q And you didn t verify the accuracy of any quotes
17 with the people who you quoted in this article?

18 A Again, no, I heard them and didn t have any
19 confusion.

20 Q Did you verify with them about the accuracy of the
21 context in which it s quoted?

22 A No.

23 Q Now, the next article, 807 -- well, one question.
24 At these meetings then, you re in attendance and other
25 people are in the attendance, right?

1 A That s correct.

2 Q And the people who are in attendance, especially
3 the ones you quote in the article, they re residents of
4 Dover as far as you know, right?

5 A Yes.

6 Q They re people who are available, aren t they?

7 A Excuse me?

8 Q Available in the sense you can call them up the
9 next day if you wanted to and double-check a statement they
10 made?

11 A Yes.

12 Q So these are not people who are just flying in from
13 another country for these meetings, right?

14 A To my knowledge.

15 Q So they re people who are in the area.

16 A To my knowledge, again, I don t poll everyone
17 that s there, but they have to sign in and put their address
18 at the front of the meeting.

19 Q So if someone had to find those people, if they ve
20 signed in the book as far as your knowledge and what you ve
21 seen at these meetings, you could track them down?

22 A I believe so.

23 Q Now, article 807 -- excuse me, exhibit 807, that s
24 an article dealing with the August 2nd, 2004 school
25 meeting, right?

1 A Yes.

2 Q And that s a school meeting that, according to the
3 title, deals with, A Minority Also Wants Book on, quote,
4 Intelligent Design, end quote.

5 A Yes.

6 Q Okay. So this is talking about a book dealing with
7 intelligent design at this meeting, right?

8 A Yes, and the *Biology* text was the primary part of
9 the article.

10 Q The *Biology* text, the Prentice Hall *Biology* book?

11 A Right, the vote taken to approve that.

12 Q Now, intelligent design had been mentioned at
13 previous school board meetings, hadn t it?

14 A I had never heard it mentioned before this meeting.

15 Q So the first time you ever heard it was at the
16 August 2nd, 2004 meeting?

17 A That s correct.

18 Q And in this article, exhibit 807, you quote the
19 term intelligent design a few times, right?

20 A Yes.

21 Q Okay. And again, although you mention a few times
22 in the article as well the term creationism, you don t have
23 any -- you don t have that word in any quote, a direct quote
24 that you can attribute to any school board member or school
25 official, right?

1 A No, it s in reference to the ongoing debate about
2 the book and creationism was what had been talked about in
3 the previous meetings, creating a context.

4 Q But now at this particular meeting the conversation
5 is about intelligent design?

6 A That s correct.

7 Q So you are adding the term creationism to this
8 article, correct?

9 A Again, it s creating a context for what had gone
10 before. And also at this meeting it wasn t clear that they
11 had abandoned creationism. It was just that they were
12 introducing intelligent design.

13 Q Now, in the article, column one, page one, you have
14 comments by Bill Buckingham about the approval of the book
15 *Biology*, in conjunction with a companion text *Of Pandas and*
16 *People*, that that teaches intelligent design. So Bill
17 Buckingham at this particular meeting would have said *Of*
18 *Pandas and People* teaches intelligent design?

19 A Yes.

20 Q Bill Buckingham didn t say at this particular
21 meeting that *Of Pandas and People* teaches creationism, did
22 he?

23 A No, he didn t.

24 Q And according to your article, column one, page
25 one, *Of Pandas and People* is a book published by Foundation

1 for Thought and Ethics, and questions the science behind
2 Darwin s theory of evolution, is that correct?

3 A Yes.

4 Q Now, that s something you had conducted your own
5 research on or was that discussed at the meeting?

6 A No, I conducted my own research on that.

7 Q But at the August 2nd meeting then, as far as
8 what was being discussed then, it was the book *Biology*,
9 Prentice Hall, and then the companion book *Of Pandas and*
10 *People*, which teaches intelligent design, right?

11 A That s correct.

12 Q Now, the next article that you can look at is 808.
13 Now, this article I believe you said yesterday was written
14 at the same time you wrote exhibit 807, right?

15 A Yes, that s correct.

16 Q And this article, again, you didn t write the title
17 of it, is that right?

18 A Right.

19 Q So you didn t write, "Michigan Law Center Offers a
20 Defense of Creationism."

21 A No, I didn t.

22 Q That would have been the editor writing it based
23 upon whatever he or she viewed was the point of your
24 article, correct?

25 A I guess, yes.

1 Q And in this article, again you point to a previous
2 conversation you had with Robert Boston of American United?

3 A That s correct.

4 Q And about a threatened lawsuit from American
5 United, is that right?

6 A Yes, that s correct.

7 Q And that threatened lawsuit from American United
8 was if a -- the school had adopted a textbook that taught
9 both creationism and evolution, is that right?

10 A Right, that s what that quote was in reference to.

11 Q But the textbook that had been adopted on
12 August 2nd was the Prentice Hall *Biology* book, right?

13 A That s right.

14 Q And also in the article it talks about Bill
15 Buckingham mentioning that the Thomas More Center would
16 offer legal -- free legal assistance to the school district,
17 right?

18 A Yes.

19 Q Did he make those comments at the August 2nd
20 meeting?

21 A Yes, he did. Let me clarify, he made reference to
22 a law firm offering service, but didn t go into detail. So
23 I did go up and question him. So he didn t use the name
24 Thomas More or go into very much detail during the meeting.
25 I questioned him after the meeting.

1 Q And it was after the meeting that he gave you a
2 copy of a letter from the Thomas More Law Center to him and
3 the district?

4 A That s correct.

5 Q And you were able to keep that letter?

6 A Yes.

7 Q And quoted in your article is from that letter, so
8 I would take it you had picked the most relevant part of the
9 letter, am I right on that?

10 A Yes.

11 Q And that quote says, from the Thomas More Law
12 Center letter, "A textbook adopted by the school board that
13 presents an alternative theory to evolution does not violate
14 the constitution as long as the alternative theory is
15 appropriately presented." Correct?

16 A Yes.

17 Q And that quote doesn t mention teaching of
18 creationism, does it?

19 A No.

20 Q And also the article says that, in column two, that
21 Buckingham had said to you -- I take it this would have been
22 after the meeting?

23 A Yes.

24 Q That the Thomas More Law Center had referred to him
25 or had recommended to him the book *Of Pandas and People*?

1 A Yes.

2 Q And *Of Pandas and People* is the book that
3 Buckingham had mentioned on August 2nd that teaches
4 intelligent design?

5 A Yes, that s correct.

6 Q But -- and that s the same meeting where he never
7 said *Of Pandas and People* teaches creationism, right?

8 A No, he never said *Of Pandas and People* teaches
9 creationism.

10 Q Now, if you can look at the next article, exhibit
11 809. So now this is dealing with the September 6th, 2004
12 meeting, correct?

13 A Yes, that s correct.

14 Q And again the title of this article, that s done by
15 the editor?

16 A That s correct.

17 Q And have you ever -- when you submit your draft
18 articles, do you put a title on the article?

19 A I don t.

20 Q And the purpose of a title is to, what, catch the
21 attention of the reader, right?

22 A Yes.

23 Q Now, in the first paragraph of this article you say
24 that the school board is considering purchase of a companion
25 textbook to teach creationism as part of the curriculum.

1 That s your statement, right?

2 A Right.

3 Q Now, the book they re talking about though, at this
4 particular time, since they ve already adopted the *Biology*
5 book from Prentice Hall, is *Of Pandas and People*.

6 A That s correct.

7 Q And *Of Pandas and People* had been referred to at
8 the meetings as a book on intelligent design, correct?

9 A That s correct.

10 Q And you had done some research on the book to find
11 out the background of the book, correct?

12 A Yeah, just limited research at that time.

13 Q And what you found out from your limited research
14 according to your article is that Foundation for Thought and
15 Ethics had prepared the book, and it just questions the
16 science behind the theory of evolution, correct?

17 A That s correct.

18 Q And there s nothing to indicate from what your
19 research data and what was mentioned at these meetings, that
20 the book *Of Pandas and People* is a creationism book, right?

21 A That s true.

22 Q Okay. Now, in the second -- second column of
23 exhibit 809, you have a paraphrasing of comments by Bill
24 Buckingham and his attempt to distinguish creationism and
25 intelligent design.

1 A Yes, that s correct.

2 Q Were those comments made at the September 6th
3 meeting?

4 A That was made after the meeting.

5 Q In response to questions by you?

6 A No, he came up to me.

7 Q He came up to you?

8 A Yes.

9 Q And was anyone else around when --

10 A There were other people around, they might have
11 heard the conversation, but it was between the two of us.

12 Q And did you verify with Mr. Buckingham the accuracy
13 of your paraphrasing?

14 A Again, I didn t need to, I heard it. I wasn t
15 confused about what he said.

16 Q Now, the next article -- again, this was after the
17 meeting you say when he made these comments to you?

18 A Yes.

19 Q Him coming up to you and talking to you.

20 A Yes.

21 Q So people sometimes talk to you even though you re
22 a reporter, people -- people are friendly to you?

23 A Sometimes they are, sometimes they re not.

24 Q Well, that is true with everybody.

25 The next article, exhibit 80 -- excuse me, 813.

1 One thing, one thing though. If you can go back to
2 809, please.

3 A Yes.

4 Q I m sorry.

5 The third column, one, two, three, four, five
6 paragraphs down, you have, and I apologize if I can t
7 pronounce this correctly, Irene Kavala Austine?

8 A Austin.

9 Q Okay, Austin, sorry.

10 A Yeah.

11 Q Was she at the September 6th meeting?

12 A Yes, she was.

13 Q And the comments that you have summarized here
14 about the teaching of evolution has never caused her to see
15 someone lose their faith in God; were those comments that
16 she had made during the public comment portion of the
17 meeting?

18 A Yes, that s correct.

19 Q Did you walk up to her afterwards and ask her any
20 further questions about those statements?

21 A No, I believe I went up to her afterwards. She had
22 said her name, but I didn t get the spelling of it
23 correctly, so I did go up to her, get the spelling of her
24 name, and she -- I asked her, you know -- she had made
25 reference to being a teacher, so I asked her for a little

1 bit more detail on that.

2 Q But these were just her own just comments, not
3 based upon any, like, scientific study she had done or
4 anything like that, right?

5 A I can't speak to that.

6 Q Exhibit 813. This is the October 18th, 2004
7 meeting?

8 A The -- yes, the article comes from that. But
9 again, I wasn't in attendance.

10 Q Okay. Well, that was my question to you. You
11 weren't there that day.

12 A That's right.

13 Q So this article is a follow-up article the editors
14 had asked you to do?

15 A That's correct.

16 Q So you're writing this article based upon
17 interviews you had conducted the day after the
18 October 18th meeting?

19 A That's correct.

20 Q So the article is not based upon any firsthand
21 observations you had made during the school board meeting?

22 A Right, not during the meeting, just during my
23 interviews.

24 Q So the article is just based on secondhand
25 information?

1 A It s based on firsthand information from the people
2 that I interviewed.

3 Q Who told you what happened at the meeting?

4 A That s correct, and their positions.

5 Q And as your normal practice is, any of the
6 statements that you quote people in or that you paraphrase
7 people in this article, you never verify with them the
8 accuracy of these statements?

9 A Not unless I need to.

10 Q Or the context or anything like that.

11 The next article is, I believe it would be 817, is
12 that right?

13 A I might be missing one. I ve got up to 813.

14 Q I may have it misnumbered.

15 It could be 814. 810, I m sorry.

16 A 810? Okay, I ve got it.

17 Q There was a question yesterday about the quote you
18 have from Mr. Weinrich there with the eclipses or ellipses.

19 A Yes.

20 Q When he was talking, and what you quoted here, this
21 was based upon a two to five minute speech he was giving?

22 A Yes.

23 Q Okay. So out of that two to five minutes of
24 speaking you were able to condense it to, in effect, two
25 sentences?

1 A I wouldn't say I condensed it. I would say that I
2 picked out this quote as capturing the essence of what he
3 was saying during that two to five minute speech.

4 Q But you chose what to include as far as his
5 statements for your article, right?

6 A This seemed to be the most representative of his
7 position, yes.

8 Q Just based upon your -- what you find to be the
9 appropriate thing to put in the article, right?

10 A Yeah, based on what he said.

11 Q Now, during the school board meetings, school board
12 members had commented about inaccuracies in reporting, isn't
13 that true?

14 A Yes, starting mostly in November.

15 Q You don't remember anything back in June of
16 comments being made?

17 A I don't remember a comment being made, no.

18 Q And school board members have come up to you
19 personally and commented about inaccurate statements in your
20 articles?

21 A No, not specifically. I've had two off-the-record
22 conversations with Dr. Nilsen and with Mr. Bonsell, but they
23 asked for those to be off the record, so I wouldn't speak to
24 that. And then the only other instance would be Bill
25 Buckingham coming up to me, and I included that in the

1 article, in reference to when he said you have to
2 distinguish between -- in the September whatever that
3 article is, September 9th, I think, 3rd.

4 MR. WHITE: I have no further questions.

5 THE COURT: All right. Any redirect?

6 MR. WALCZAK: Just a couple, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. WALCZAK:

9 Q Good morning.

10 Mr. White asked you several times whether you
11 verify the accuracy of your quotes or the context of the
12 quotes after you write them down. And then I think you
13 responded to all of those questions that you don't. Why
14 not?

15 A Again, because I've heard them, they're in my
16 notes, I remember them saying them, I'm writing the articles
17 almost -- in most cases, specifically talking about these
18 articles, right after the meeting. The only time I would
19 verify is if I didn't understand what was said, if I didn't
20 hear it correctly, if there was some confusion. Otherwise I
21 just assume that people can read the articles and go through
22 the proper channels if they felt like something was
23 inaccurate.

24 Q And Mr. White asked you about the quote that you
25 attributed to Mr. Buckingham about "2,000 years ago someone

1 died on the cross." And he asked you if you had ever -- if
2 he made that quote just once, and I think you answered that
3 he did.

4 A Yes.

5 Q So he made that quote just once in June?

6 A That s correct, in June.

7 Q And I believe you testified yesterday that you ve
8 been covering the school board meetings, Dover Area School
9 Board meetings for about four years?

10 A That s correct.

11 Q And have you heard Mr. Buckingham make that same
12 comment "2,000 years ago someone died on the cross" before
13 June 2004?

14 A No.

15 MR. WALCZAK: I have no further questions.

16 THE COURT: Any recross?

17 MR. WHITE: No.

18 THE COURT: All right, ma am, thank you. You may
19 step down. That completes your testimony.

20 MR. BENN: Is she excused, Your Honor? May she
21 leave?

22 THE COURT: No need to recall her in my opinion.
23 You re excused.

24 MR. WALCZAK: Your Honor, plaintiffs call Joseph
25 Maldonado. He s been sequestered.

1 THE COURT: All right.

2 MR. WALCZAK: Your Honor, I would propose that we
3 discuss the exhibits after we've completed Mr. Maldonado's
4 testimony, since I think it's going to be the same fight.

5 THE COURT: Yeah, I just came to the same
6 conclusion. I think rather than interrupt the reporter's
7 testimony, we'll hold it, keep moving, and we'll hold that
8 until later.

9 MR. WALCZAK: Your Honor, it was also suggested to
10 me that there is some overlap with the articles testified
11 to -- about the articles testified to by Mr. Stough, which
12 we have not resolved yet. And it might be an appropriate
13 time to include those articles in the discussion that we
14 have about these.

15 THE COURT: All right.

16 JOSEPH SCOTT MALDONADO,
17 called as a witness on behalf of the plaintiffs, having been
18 duly sworn or affirmed according to law, testified as
19 follows:

20 THE DEPUTY CLERK: State your name and spell your
21 name for the record, please.

22 THE WITNESS: My name is Joseph Scott Maldonado.
23 Joseph is J-O-S-E-P-H, Scott is S-C-O-T-T, Maldonado is
24 M-A-L-D-O-N-A-D-O.

25 DIRECT EXAMINATION

1 BY MR. WALCZAK:

2 Q Good morning, Mr. Maldonado.

3 A Good morning.

4 Q You are a part-time freelance writer for the York
5 Daily Record?

6 A That is correct.

7 Q And you have not attended any of the trial prior to
8 stepping into this courtroom a few minutes ago?

9 A We had stepped in momentarily, and then we were
10 informed to leave, so we were here about two minutes or so.

11 Q So you have not sat through any of the testimony?

12 A No, sir.

13 Q Prior to becoming a freelance writer, you were in
14 the military?

15 A I was in the United States Air Force from 1987 to
16 1994.

17 Q And what do you do now?

18 A I am a freelance writer for the York Daily Record,
19 and I also own a small sandwich shop in York, Pennsylvania,
20 called PBJs in the Central Market House.

21 Q You don't write for any other newspapers?

22 A No, I do not.

23 Q And you've been a freelance writer for the York
24 Daily Record for four years?

25 A It will be four years in January.

1 Q And one of your steady assignments is the Dover
2 Area School Board?

3 A It had been up until August of 2005.

4 Q And so between late 2003 and until August 2005,
5 that was what we might term your steady beat?

6 A Yes, sir.

7 Q And during that time did you cover most of the
8 meetings of the Dover board?

9 A That is correct.

10 Q And when I say the Dover board, you didn't cover
11 committee meetings?

12 A No.

13 Q So these would be the board meetings that are held
14 open to the public?

15 A That is correct.

16 Q And in 2004, do you recall whether you attended all
17 of the Dover Area School Board meetings?

18 A I covered a large majority of them. I cannot
19 remember if I made every single one, but an overwhelming
20 majority of them, yes.

21 Q I want to ask you some general questions that will
22 apply to all of the articles that you wrote between June of
23 2004 and November of 2004. When you attend these meetings
24 you sit in the front row?

25 A I usually sit somewhere near the front, yes.

1 Q And why do you do that?

2 A So that I have a clear line of sight of the board
3 and the best opportunity to hear what s being said.

4 Q And on the articles that were discussed in your
5 deposition, which are going to be the same ones we talk
6 about today, there are titles and subtitles on those
7 articles?

8 A Yes, there are.

9 Q Do you write those?

10 A No, I do not.

11 Q Who writes those?

12 A Whoever the editor is, I guess, that s reviewing
13 the story.

14 Q But the rest of the text in there is your work
15 product?

16 A That is correct.

17 Q When you go to these meetings do you take notes?

18 A Yes, I do.

19 Q How do you take those notes?

20 A They are written notes.

21 Q Is it your practice to take accurate notes?

22 A Yes, it is.

23 Q And do you take quotes down in a certain way in
24 your notes?

25 A Yes, I do.

1 Q How do you do that?

2 A I write them down verbatim.

3 Q And do you put little quote marks around them in
4 your notes?

5 A Yes, I do.

6 Q And when you go to write your articles, do you rely
7 on your notes?

8 A Yes, I do.

9 Q What do you do, you compare your notes or you read
10 your notes and then you write your article?

11 A Umm, yes.

12 Q The York Daily Record is a morning paper?

13 A That is correct.

14 Q And the Dover Area School Board meetings occur in
15 the evening?

16 A That is correct.

17 Q And do they usually end about the same time?

18 A Typically between eight and ten.

19 Q So when do you write the articles?

20 A It depends on the -- it depends on what news comes
21 out of the meeting. For the most part I usually write them
22 the next day for Wednesday s paper, but sometimes I will
23 write them that night.

24 Q So if you or the editors think there is something
25 particularly noteworthy, they want to get it in the paper

1 the next day?

2 A Yes.

3 Q So you would have to write it immediately after the
4 board meeting?

5 A That is correct.

6 Q Now, the York Daily Record is separate from the
7 York Dispatch?

8 A Yes, it is.

9 Q It s a different newspaper?

10 A Yes.

11 Q Do you know Heidi Bernard-Bubb?

12 A I know that she is the correspondent from the York
13 Dispatch.

14 Q And does she regularly cover the same Dover board
15 meetings you cover?

16 A Yes.

17 Q Do you see her there?

18 A Yes, I do.

19 Q Have you ever worked on an article together with
20 her?

21 A No, sir.

22 Q Have you ever discussed an article with her?

23 A No.

24 Q Have you ever talked about what happened before you
25 write the article?

1 A I m sorry, can you say that again?

2 Q Have you ever discussed with her what you might
3 have seen before you sit down to write an article?

4 A I think we ve talked about meetings in general, but
5 not for the sake of writing articles.

6 Q Now, we re going to discuss eight articles that you
7 wrote between June and December of 2004. And I just -- I
8 want -- it s the same articles that you were asked about by
9 Mr. White at your deposition a couple of weeks ago.

10 Do you sit here today under oath and say that the
11 articles you wrote accurately depict what happened at Dover
12 School Board meetings?

13 A Yes, I do, however I would like to note that these
14 are Heidi s articles, not mine, that are up here.

15 Q And do you testify today that the quotes you
16 attributed to the people are accurate to the best of your
17 knowledge based upon what you heard them say?

18 A Yes.

19 Q And that when you wrote in your articles that
20 somebody said something, and even though it s not in quotes,
21 that your characterization was to the best of your ability
22 true and accurate?

23 A Those words are paraphrased from things that the
24 subject said.

25 MR. WALCZAK: Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. WALCZAK:

3 Q Mr. Maldonado, I show you what s been marked as
4 plaintiff s exhibit 790. Do you recognize this?

5 A Yes, I do.

6 Q And is this an article you wrote reporting on the
7 June 7, 2004, Dover School Board meeting?

8 A Yes, it is.

9 MR. WALCZAK: Matt, if you could highlight the
10 second column there.

11 BY MR. WALCZAK:

12 Q In that second column, it says, "Board member
13 William Buckingham, who sits on the curriculum committee,
14 said a book had been under consideration, but was declined
15 because of its one-sided references to evolution."

16 Did I read that correctly?

17 A Yes.

18 Q And then there is a quote attributed to him, "It s
19 inexcusable to teach from a book that says man descended
20 from apes and monkeys. He said we want to book that gives
21 balance to education."

22 Did I read that correctly?

23 A Yes, you did.

24 Q Is that an exact quote of what you heard
25 Mr. Buckingham say that evening?

1 A Yes, sir.

2 Q Now, in that next paragraph it says, "Buckingham
3 and other board members are looking for a book that teaches
4 creationism and evolution."

5 Now, there s no quotes in that paragraph, is that
6 correct?

7 A That is correct.

8 Q You used the term, "looking for a book that teaches
9 creationism and evolution." Are those words that you heard
10 Buckingham and other board members say?

11 A That is correct.

12 Q So you heard Bill Buckingham use the word
13 creationism at that June 7th meeting?

14 A Yes, sir.

15 Q And it says, "Buckingham and other board members."
16 What other board members do you recall using the word
17 creationism?

18 A May I have a moment to review the article?

19 Q Please.

20 (Pause.)

21 A In the paragraph that follows, it says, "Board
22 president Allen Bonsell disagreed, saying there were only
23 two theories, creationism and evolution."

24 Once the word creationism was introduced into this
25 discussion, it was a word that all the board members would

1 have used during the course of that discussion.

2 Q So this wasn't a meeting where the word creationism
3 was used just once?

4 A No, this was an ongoing discussion.

5 Q And there were people who spoke at the meeting
6 during the public comment section, correct?

7 A That is correct.

8 Q And some of those people used the word creationism?

9 A That is correct.

10 Q But I just want to be clear, you distinctly
11 remember Dover Area School Board members at that June
12 meeting using the term creationism?

13 A Yes, sir.

14 Q There's a quote down at the bottom of the --
15 starting at the bottom of the third column, attributed to
16 Mr. Buckingham. Quote, Have you ever heard of brainwashing.
17 If students are taught only evolution, it stops becoming
18 theory and becomes fact.

19 Did I read that correctly?

20 A Yes.

21 Q And is that exactly what you heard Mr. Buckingham
22 say that evening?

23 A Yes.

24 Q And he's responding to something that somebody had
25 said during the public comment period.

1 A He was responding to Mr. Max Pell, a former
2 student.

3 Q Now, in that first full paragraph on the first --
4 I m sorry, on the fourth column, it says, "After the meeting
5 Buckingham said." Do you remember when and where that
6 conversation with Mr. Buckingham took place?

7 A That would have took place near his seat on the
8 board as the meeting ended.

9 Q And did you approach him to ask a question?

10 A Yes, I did.

11 Q Is that unusual?

12 A No.

13 Q So you often speak with board members after the
14 meeting?

15 A Yes.

16 Q And it -- the paragraph reads, "After the meeting
17 Buckingham said all he wants is a book that offers balance
18 between what he said are Christian views of creationism and
19 evolution."

20 Now, again there s no quotes in that paragraph.
21 Why is that?

22 A It s based on a quote that s in the next paragraph.
23 "This country was founded on Christianity and our students
24 should be taught as such."

25 Q And let s look at that next paragraph. It said,

1 "He said there needn t be consideration of the beliefs of
2 Hindus, Buddhists, Muslims or other faiths and views."

3 Now, is that something he said or was that a
4 question you posed to him?

5 A That was a question that was posed to him that made
6 mention of Hindus, Buddhists, Muslims or people of other
7 faiths.

8 Q So --

9 A It was phrased that way to him.

10 Q And who phrased that question?

11 A I did.

12 Q That was your question?

13 A Yes, sir.

14 Q So you would have asked him, something like -- do
15 you remember what question you asked him?

16 A I probably would have said something, Do you
17 believe -- do you believe that the people of other faiths in
18 your district, Buddhists, Muslims, people of other faiths,
19 that they need to be considered in this matter?

20 Q And then you have a quote attributed to him, "This
21 country wasn t founded on Muslim beliefs or evolution. This
22 country was founded on Christianity and our students should
23 be taught as such." And that s in quotes, so is that
24 verbatim what he said?

25 A Yes, sir.

1 Q Would you have been taking notes during that time?

2 A Yes, sir.

3 Q And so he s answering and you re -- you were
4 writing down?

5 A Yes, sir.

6 Q And you were trying to be as accurate as you could?

7 A Yes, sir.

8 MR. WHITE: Objection, leading.

9 THE COURT: Why don t you rephrase. I ll sustain
10 the objection.

11 THE WITNESS: I was trying to be accurate, yes.

12 BY MR. WALCZAK:

13 Q In that last paragraph in plaintiff s exhibit 790,
14 there is a reference to Assistant Superintendent Michael
15 Baksa. Did you speak with him the next day?

16 A That is correct, on Tuesday.

17 Q So you contacted him?

18 A Yes.

19 Q And at the bottom of that paragraph it says --
20 attributes to him saying, "Teachers, administrators,
21 curriculum committee members will work together to find a
22 book that is agreeable to all."

23 A Yes, sir.

24 Q Do you know whether any of that could be in quotes?

25 A I don t remember, sir.

1 Q But that is an accurate summary of what he said to
2 you?

3 A That would have been an accurate paraphrase of what
4 was said to me.

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

6 THE COURT: You may.

7 BY MR. WALCZAK:

8 Q Show you what s been marked as plaintiff s exhibit
9 791. Do you recognize this?

10 A Yes, I do.

11 Q Is this an article you wrote that was published on
12 June the 10th?

13 A Yes, sir. Well, it wasn t written on June the
14 10th, it probably would have been written on June the 9th,
15 or somewhere in that area.

16 Q It ran in the York Daily Record on June the 10th?

17 A Yes.

18 Q And what is this piece in relation to the -- this
19 isn t reporting on a school board meeting?

20 A It s to get reaction to an issue. We do that
21 frequently after different government meetings, school board
22 meetings, to find out what the person on the street is
23 feeling about certain issues.

24 Q And is it fair to characterize this as man on the
25 street interviews to gauge people s reactions?

1 A Yes, sir.

2 Q And were you the one going out and interviewing
3 people in the community?

4 A Yes, I was.

5 Q Direct your attention to the bottom of the first
6 column at the top, it says, "During this past Monday night s
7 board meeting" -- and then going over to the second column,
8 you say, "During this past Monday night s board meeting,"
9 that would have been the June 7 board meeting?

10 A That is correct.

11 Q It said, "Board members, Alan Bonsell, Noll
12 Weinrich and Buckingham spoke aggressively in favor of
13 having a biology book that includes the theories of creation
14 as part of the text."

15 Now, you mention three board members who spoke,
16 quote, aggressively in favor of having a biology book that
17 includes the theories of creation as part of the text. So
18 you remember those three individuals talking about having an
19 evolution book that -- or biology book that includes
20 discussion of creationism?

21 A Yes.

22 Q And then you have a quote in the next paragraph
23 attributed to Bill Buckingham, All I m asking for is
24 balance, end quote. Is that something you recall Bill
25 Buckingham saying directly?

1 A Yes.

2 Q And then in that next paragraph you have written,
3 "Asked if he thought this might violate the separation of
4 church and state, Buckingham called the law" -- and then you
5 have in quotes, "a myth." So, again, that s a quote of what
6 Mr. Buckingham said?

7 A Yes.

8 Q And he was talking about the separation of church
9 and state?

10 A Yes.

11 Q Now, at the bottom of the exhibit, plaintiff s 791,
12 it appears you had a telephone conversation with Noll
13 Weinrich.

14 A Yes.

15 Q And Mr. Weinrich was a Dover board member at the
16 time?

17 A Yes.

18 Q And if you could look from the second column, where
19 it says, "Regardless of its potential legal ramifications;"
20 you were discussing a reaction you got from a Mr. Bowman.
21 Do you see that?

22 A Yes, sir.

23 Q And was your call to Mr. Weinrich to ask for
24 reaction?

25 A Yes, it was.

1 Q And in those last three paragraphs in the last
2 column at the bottom of the page, you wrote, "On Wednesday
3 afternoon Noll Weinrich, a member of the Dover Area School
4 Board said, students needn t worry about that."

5 And what are you referring to there, when you say
6 "about that"?

7 A It refers to the previous paragraph, "Once these
8 types of religious themes are introduced into a classroom,
9 it puts a lot of pressure;" that paragraph.

10 Q "So students needn t worry about that." And then
11 you say that Mr. Weinrich said, "Because the board s goal is
12 not to say that students must believe in creationism or the
13 existence of a creator, but he also said that creationism
14 does not imply the existence of an intelligent life force
15 ultimately responsible" -- I m sorry, "does imply the
16 existence of an intelligent life force ultimately
17 responsible for all life." Is that correct?

18 A Yes.

19 Q Is that something he said to you on that Wednesday
20 afternoon?

21 A Yes.

22 Q And was that phone conversation by telephone?

23 A Yes.

24 Q Then in that second to last paragraph in the third
25 column, you wrote, "Then he stressed again that no one will

1 be required to believe in creationism or a creator, any more
2 than they are currently required to believe in evolution."
3 So when you say "he stressed again," is that something he
4 said to you more than once?

5 A Yes.

6 Q He said that the school wasn't going to force
7 students to believe in creationism.

8 A Yes.

9 Q And then you have a direct quote attributed to him
10 in that last paragraph, and it reads, quote, What I am
11 saying is that when you teach only one theory -- and then in
12 parenthesis -- evolution, that theory becomes a fact. I'm
13 not saying that students must believe in creation, but I do
14 believe they must consider the possibility." Is that a
15 verbatim quote?

16 A Yes, sir.

17 MR. WALCZAK: Your Honor, I'm not going to take him
18 through the rest of these articles in as much detail as I
19 did with Ms. Bubb, but we can break any time Your Honor
20 feels appropriate.

21 THE COURT: Why don't we take a break now. I think
22 that would be appropriate before you get into the next area.
23 We'll take a 20 minute break, and then we'll reconvene after
24 that and you can pick up your direct again.

25 We'll be in recess.

1 THE DEPUTY CLERK: All rise.

2 (Whereupon, a recess was taken from 10:23
3 a.m. to 10:46 a.m.)

4 THE COURT: All right, Mr. Walczak, you may
5 continue.

6 BY MR. WALCZAK:

7 Q Mr. Maldonado, during the break we took the
8 opportunity to put the rest of the articles in front of you
9 that I m going to ask you about. Do you see plaintiff s
10 exhibit 792 in front of you there?

11 A Yes, I do.

12 Q And is this something you wrote?

13 A Yes, it is.

14 Q And the date on it is June the 14th. Was that
15 the date of a board meeting?

16 A Yes, sir.

17 Q And what is this article?

18 I m sorry, is this a piece that you wrote to
19 prepare people for the board meeting that evening?

20 A In anticipation of the meeting, yes.

21 Q And if you look at the first couple of paragraphs
22 there, you say, "Nearly a week after the Dover Area School
23 Board s controversial comments about teaching creation along
24 with evolution in biology class, people across the county
25 are pondering the potential benefits and repercussions."

1 Did I read that correctly?

2 A Yes, you did.

3 Q And then in the next paragraph you talk about,
4 "William Buckingham said as part of a search for a new
5 biology book, he and others are looking for one that offers
6 balance between the Christian views of creation and Darwin s
7 theory of evolution." Is that in the second paragraph
8 there?

9 A Yes.

10 Q And then in the third and fourth paragraphs there,
11 it appears that you repeat what you had written previously
12 about Mr. Buckingham s comments that this country was
13 founded on Christianity.

14 A That is correct.

15 Q So that s not something he said to you again?

16 A That is correct.

17 Q You re just going back and reminding readers of
18 what he had said to you a couple -- I guess it was a week
19 earlier?

20 A The previous Monday, yes.

21 Q And in the middle of that second column, there
22 are -- there s a quote from Mr. Weinrich, says, "On Thursday
23 school board member Noll Weinrich."

24 A Yes, sir.

25 Q And again, that s referring back to what he had

1 told you the week before?

2 A That is correct.

3 Q So those aren't new quotes?

4 A That is correct.

5 MR. WALCZAK: Matt, if you could highlight the uses
6 of the word creation.

7 BY MR. WALCZAK:

8 Q Now, the use of the word creation or creationism is
9 through -- used throughout your article, correct?

10 A Yes, it is.

11 Q And you even say, "Christian views of creation,"
12 you repeat Mr. Buckingham's, "This country wasn't founded on
13 Muslim beliefs or evolution. This country was founded on
14 Christianity and our students should be taught as such."

15 Did anybody ever contact you to print a correction
16 or retraction?

17 A No, sir.

18 Q Did Mr. Buckingham contact you?

19 A No, sir.

20 Q Mr. Weinrich?

21 A No.

22 Q Anybody in the administration?

23 A No, sir.

24 Q Are you aware of whether anybody contacted your
25 editors or your publisher?

1 A To the best of my knowledge no one contacted myself
2 or anyone at the York Daily Record.

3 Q Now, in the middle of that article there s a -- an
4 inset box captioned, "If You Go." Is that something you
5 wrote?

6 A I don t believe that I wrote that, no.

7 Q And do you know why that s there?

8 A I think it s just to tell people that there s a
9 public meeting that night of the Dover Area School Board,
10 where and when it is.

11 Q And it says, "The public will have a chance to
12 speak on the issue of teaching evolution and creationism in
13 Dover schools at the school board meeting at 7 p.m."

14 A That is correct.

15 Q If you could turn to the next article, which is
16 plaintiff s exhibit 793. And this is titled, "Book is Focus
17 of More Debate." Again, is this an article you wrote?

18 A Yes, it is.

19 Q And it was written on June 15th.

20 A This article would have been written late Monday
21 evening, June 14th.

22 Q And it was published on the 15th?

23 A That is correct.

24 Q And you attended that meeting?

25 A Yes, I did.

1 Q And what you wrote in here is accurate?

2 A Yes, it is.

3 Q Now, in the first couple of paragraphs you say
4 that, "At Monday evening s Dover Area School Board meeting
5 William Buckingham apologized to anyone he may have offended
6 with the comments he made at last week s board meeting." Is
7 that correct?

8 A Yes.

9 Q And then in the next paragraph you say, "But then
10 the school board member reiterated one of his statements to
11 the roughly 90 in attendance, that the separation of church
12 and state is a myth." And then you have this quote
13 attributed to Mr. Buckingham. Nowhere in the constitution
14 does it call for separation of church and state, end quote.

15 A Yes.

16 Q And that s -- you heard Mr. Buckingham say those
17 words?

18 A Yes.

19 Q Now, I just want to clarify, because my
20 recollection is that he said words to that effect, or you
21 reported that he said words to that effect at the June 7th
22 meeting.

23 A That is correct.

24 Q So this is -- this is not referring back to
25 June 7th, this is a second time that he made these

1 comments?

2 A That is correct.

3 Q And then going down to the last two paragraphs in
4 the first column, you write, "Buckingham said while growing
5 up his generation prayed and read from the Bible during
6 school. Then he said liberals, in quote, black robes, end
7 quote, were taking away the rights of Christians." Now did
8 you write that based on what you heard Mr. Buckingham say?

9 A Yes, I did.

10 Q And then in the next paragraph, the last one in the
11 first column, you attribute a quote to Mr. Buckingham, 2,000
12 years ago someone died on a cross, he said, can t someone
13 take a stand for him, end quote. Is that a verbatim quote
14 of what you heard Mr. Buckingham say?

15 A Yes, it is.

16 Q Now, you said earlier that you had been covering
17 the Dover Area School Board since late fall of 2003.

18 A Yes, sir.

19 Q Had you ever heard Mr. Buckingham say words to this
20 effect before?

21 A I can only answer questions that pertain to the
22 articles in front of me.

23 Q That s fine, I ll withdraw that question.

24 In the next column, second full paragraph, again, I
25 believe you re attributing to Mr. Buckingham, you have a

1 quote, I challenge you, in parenthesis, the audience, to
2 trace your roots from the monkey you came from -- to the
3 monkey you came from, end quote. Did I read that correctly?

4 A "I challenge you, the audience, to trace your roots
5 to the monkey you came from."

6 Q And again, is that something you heard
7 Mr. Buckingham say on the evening of Tuesday, June 14th?

8 A Yes, sir.

9 Q And then further down in that column you talk about
10 a Charlotte Buckingham.

11 A Yes, sir.

12 Q And did she get up and speak during the public
13 comment period?

14 A Yes, sir.

15 Q And you say, "After quoting several verses from the
16 book of Genesis in the Bible she asked, how can we allow
17 anything else to be taught in our schools?" Is that
18 correct?

19 A That is correct.

20 Q And do you recall how long Mrs. Buckingham spoke?

21 A Not exactly, no.

22 Q Was it more than -- I believe they allow three
23 minutes for people to speak.

24 A I believe it was longer than what was typically
25 allowed at the time, although I can't remember the exact

1 time.

2 Q And then in that next paragraph you wrote, "During
3 her time she repeated gospel verses telling people how to
4 become born-again Christians and said evolution was in
5 direct violation of the teachings of the Bible."

6 A Yes.

7 Q Is that based on words you heard her say?

8 A Yes, it is.

9 Q And then in the next paragraph you refer to a
10 Reverend Warren Eshbach, retired?

11 A Yes, sir.

12 Q And do you know who he is?

13 A I do not know him personally, no, I only recognize
14 him from the meetings.

15 Q And you write that he said, "The book of Genesis
16 was not written as a science book but rather as a statement
17 of faith," and then you have a quote. "It s the place of
18 the church to teach on matters of faith, he said, not public
19 schools." Now, is that a direct quote?

20 A Yes, it is.

21 Q So that s something you would have written --
22 that s something you would have written in your notes?

23 A Yes, it is.

24 Q And in the -- that next paragraph, you wrote, "He
25 also said the creationism versus evolution issue was

1 polarizing the community." Now, you don't have any quotes
2 in that paragraph.

3 A That is correct.

4 Q Do you recall him using the word creationism?

5 A Yes, I do.

6 Q And how about the word polarizing?

7 A Yes, I do.

8 Q And then at the top of column three, you wrote,
9 "During the meeting Buckingham told those in attendance that
10 he had been asked to tone down his Christian remarks."
11 Again, there's no quotes there, is that correct?

12 A That is correct.

13 Q Do you recall him saying "Christian remarks"?

14 A Yes, I do.

15 Q And then you have a quote attributed to him, But I
16 must be who I am and not politically correct, end quote.

17 A That is correct.

18 Q And so that's a direct quote of what he said?

19 A Yes, sir.

20 Q If you could turn to the next article, please.

21 Actually let me just -- a couple of last questions on
22 plaintiff's exhibit 793.

23 There's been some dispute about whether
24 Mr. Buckingham said the quote, "2,000 years ago someone died
25 on a cross, can't someone take a stand for him."

1 I mean, do you have a distinct recollection of
2 Mr. Buckingham saying those words?

3 MR. WHITE: Objection, asked and answered.

4 THE WITNESS: Yes, I do.

5 MR. WALCZAK: Your Honor, this has been a matter of
6 some dispute, and I just want to make perfectly clear what
7 this witness's recollection is.

8 THE COURT: I'll allow the answer. I don't think
9 it's exactly the same question. And you did answer the
10 question, I think, did you not?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. The answer will stand.
13 Objection is overruled.

14 THE WITNESS: My recollection is he said exactly
15 the words that are in those quotes.

16 BY MR. WALCZAK:

17 Q Let's go to the next exhibit now, which is
18 plaintiff's exhibit 794.

19 I'm sorry, my co-counsel whispered. And you recall
20 him saying that at the June 14th meeting?

21 A It was at that meeting on Monday, June 14th.

22 Q Now let's try plaintiff's exhibit 794. Now, this
23 is entitled -- I'm sorry, this is -- yeah, this is entitled,
24 "Bio Book Might be Approved." Is this an article that you
25 wrote?

1 A Yes, it was.

2 Q And it was published on Wednesday, July the 14th?

3 A That is correct.

4 Q And this is about what?

5 A May I have a moment with the article, please?

6 Q Please.

7 (Pause.)

8 A This article would have been written to report the
9 news of the Monday, July 12th meeting.

10 Q And that s the meeting you attended?

11 A Yes.

12 Q And halfway down that first column you attribute
13 some things to Assistant Superintendent Michael Baksa?

14 A Yes.

15 Q And were those things he said at that meeting?

16 A Because this article was published on Wednesday, I
17 cannot say for certain whether or not I would have talked
18 with him Monday at the meeting or as a follow up on Tuesday.
19 I believe that because I do not say in the article that I
20 talked to him on Tuesday, that it would have come out of
21 that meeting.

22 Q You don t remember whether that was said during the
23 meeting -- public portion of the meeting or outside the
24 meeting?

25 A No, I don t.

1 Q You say in that paragraph that begins, "Assistant
2 Superintendent Michael Baksa said the new edition still
3 meets state standards and teaches evolution. There are no
4 references to creationism, he said." Again, there s no
5 quotes in that paragraph. Do you recall Mr. Baksa using the
6 term creationism?

7 A In this particular box I do not remember if I -- if
8 he had said that or if I had phrased the question to
9 Mr. Baksa saying, sir, are there any references to
10 creationism in this book.

11 Q But it was either Mr. Baksa using the term or you
12 using the term creationism in your question to him?

13 A That is correct.

14 Q And then in that last paragraph, beginning at the
15 bottom of the first column, you wrote, "He said neither
16 creation nor intelligent design were a part of any books
17 that were reviewed."

18 Again, do you recall him using the term intelligent
19 design?

20 A Yes.

21 Q And is that the -- do you recall whether that s the
22 first time you had heard that term used?

23 A I cannot remember the time that the phrase
24 intelligent design was introduced into these meetings or
25 conversations.

1 Q If you could turn to the next exhibit, which is
2 plaintiff s exhibit 795. Do you have that?

3 A Yes, sir.

4 Q And this is titled, "Biology Book Squeaked By." Is
5 this something that you wrote?

6 A I wrote the article, yes.

7 Q And this is about the August 2nd board meeting?

8 A That is correct.

9 Q Now, about halfway down the first column -- let me
10 backup.

11 You talk about, in the second paragraph, that there
12 was a tie four-four vote for approving the new *Biology*
13 textbook by Prentice Hall.

14 A Yes.

15 Q And then in that third paragraph you say, After
16 that vote Buckingham said he would approve the book if the
17 board would also approve a, quote, companion, end quote,
18 book, *Pandas and People*, which advocates intelligent design
19 theory. You have "companion" in quotes?

20 A That is correct.

21 Q So you distinctly -- that would have been a
22 verbatim quote of what he said?

23 A Yes.

24 Q And "he" being Mr. Buckingham?

25 And then in that last paragraph beginning at the

1 bottom of page -- of the first column, you wrote "Jeff
2 Brown." Who is Jeff Brown?

3 A Jeff Brown is a former -- a former board member on
4 the Dover Area School Board. He would have been an active
5 member at the time of this article.

6 Q You said, "Jeff Brown accused the four board
7 members voting no of blackmailing the board and holding the
8 students hostage." Again, there s no quotes. Do you
9 remember Jeff Brown using the term "blackmailing"?

10 A That is an accurate paraphrase that included the
11 word "blackmailing," yes.

12 Q And then in the next two paragraph, you come back
13 to Mr. Buckingham, and you write, "Buckingham then said if
14 he didn t get his book, the district would not get the
15 *Biology* book. Buckingham has been a staunch advocate for
16 the teaching of creationism alongside of evolution." And
17 then have you a quote attributed to Mr. Buckingham, and
18 it s, quote, If we don t get our book, you don t get yours,
19 end quote.

20 So, again, that s something you would have written
21 in your notes as a direct quote from Mr. Buckingham?

22 A That is correct.

23 Q And then two paragraphs down from there, you say
24 "Buckingham said the intelligent design book would, quote,
25 level the playing field in reference to the state s

1 evolution requirement." So again, is that -- "level the
2 playing field" is something Mr. Buckingham said?

3 A Yes.

4 Q And then further down it said, "Harkins said she
5 supported Buckingham."

6 A Yes.

7 Q So she made some indication that she supported what
8 Mr. Buckingham was saying?

9 A Yes.

10 Q Now, near the bottom of the third column there
11 is -- paragraph starts, "After the meeting Yingling said she
12 couldn t say why she changed her mind." So now this is --
13 you re now reporting on something that happened after the
14 meeting formally ended?

15 A That is correct.

16 Q And you re still in the meeting location?

17 A I am standing in front of -- if she s sitting here,
18 I m on the other side of the table in front of her.

19 Q And you wrote, But as Buckingham approached her, he
20 said, quote, I can t believe you did that, do you know what
21 you ve done, end quote.

22 So were you talking to Ms. Yingling and
23 Mr. Buckingham came up to the two of you?

24 A That is correct.

25 Q And those are the words he said to her?

1 A That is correct.

2 Q And then you quote Ms. Yingling as replying, quote,
3 I feel you were blackmailing them. I just want the kids to
4 have their books, end quote. That was her reply to
5 Mr. Buckingham?

6 A Yes, it was.

7 Q If you could turn to the next exhibit, which is
8 plaintiff s exhibit 797. Do you have that?

9 A I wrote this article.

10 Q And this is -- this was published on October 19th?

11 A Yes, sir.

12 Q And this is about the October 18th, Dover board
13 meeting?

14 A That is correct.

15 Q And this is the meeting where they were discussing
16 the curriculum change?

17 A That is correct.

18 Q Now, in the second paragraph, in the second column,
19 you wrote, "At the end of the meeting a tearful Carol Brown
20 read a statement before resigning from the board." And
21 then, "She said that on more than one occasion she had been
22 asked if she were, quote, born again, referring to the
23 Christian term for salvation." So do you recall her using
24 the term "born again"?

25 A Yes, I do.

1 Q And then you have a quote attributed to her, quote,
2 No one has nor should have the right to ask that of a fellow
3 board member, she read. An individual s religious beliefs
4 should have no impact on his or her ability to serve as a
5 school board director, end quote.

6 A That is correct.

7 Q Again, that s a direct quote of what Ms. Brown said
8 at the meeting?

9 A Yes, it is.

10 Q And this was part of her resignation statement?

11 A Yes.

12 Q Now, at the top of the third column, you have Carol
13 Brown speaking again about a law firm representing the
14 school district if they got sued.

15 A Yes.

16 Q And then at the end of that first paragraph, at the
17 top of the third column you wrote, "She said, if faculty
18 asked they would be entitled to representation from the
19 district solicitor, Stock and Leader." Are those words --
20 or words to that effect that Ms. Brown said?

21 A That is a paraphrase of words that she said.

22 Q And then you have a quote attributed to a Heather
23 Geesey. Who is Heather Geesey?

24 A Heather Geesey is a current board member and a
25 board member at the time of this meeting.

1 Q And the quote you have attributed to her is, quote,
2 If they requested Stock and Leader, they, in paren, the
3 faculty, close paren, should be fired. They agreed to the
4 book and the changes in the curriculum, end quote.

5 Do you recall Ms. Geesey saying those words?

6 A Yes, I do.

7 Q And who is Stock and Leader?

8 A Stock and Leader is a law firm in York,
9 Pennsylvania that occasionally represents the Dover Area
10 School Board as their solicitor.

11 Q And then in the next paragraph you wrote, "but
12 Miller" -- and who are you referring to there?

13 A I believe that would have been Jenn Miller.

14 Q And she s a biology teacher in the Dover School
15 District?

16 A That is correct.

17 Q And you wrote, "But Miller and science department
18 head Bertha Spahr said Geesey s statement wasn t true." And
19 then you say, "Spahr said the faculty only agreed to the
20 *Pandas* book as a compromise to address Buckingham s concern
21 that students have alternate materials to study in addition
22 to their regular text."

23 And those are words that Ms. Spahr said during the
24 public meeting?

25 A That is correct.

1 Q And is that during the public comment portion of
2 the meeting or was that in response to what Ms. Geesey had
3 said about the teachers should be fired if they asked for
4 representation?

5 A I believe she said this during the public comments
6 portion of the meeting.

7 Q And then you say, "Spahr also said that not only
8 did her department not approve the new wording, they were
9 not invited to help write it." And then you have a quote,
10 We didn't know you were going to do this, end quote.

11 So, again, that's something Ms. Spahr said at the
12 October 18th meeting?

13 A That is correct.

14 Q All right. If you could turn to the next exhibit,
15 plaintiff's exhibit 798. This is the last article we're
16 going to look at. Is this something you wrote?

17 A Along with Lori Liebo, yes.

18 Q And this is a -- again, a follow-up to the
19 October 18th meeting?

20 A Yes, it is.

21 Q I want to direct your attention to the bottom two
22 paragraphs of the third column. And you wrote, "Both the
23 American Civil Liberties Union and Americans United for
24 Separation of Church and State, who say they are closely
25 monitoring the situation in Dover, point out that if the

1 school district were to lose a legal battle, its taxpayers
2 could end up footing the plaintiffs costly legal bills."

3 And then you have a quote attributed to Bill
4 Buckingham, quote, My response is that is what -- I m sorry,
5 can you read that? Do you know what s written there?

6 A "My response to that is what price is freedom,
7 Buckingham said. Sometimes you have to take a" -- I cannot
8 read the last word.

9 Q Could --

10 A I m not -- to be honest, I m not completely sure
11 which portions of this article I m responsible for, and
12 which parts Lori Liebo -- this quote that you re reading,
13 I m not sure if that s something she would have included in
14 the article or if that s something I would have talked to
15 Mr. Buckingham about.

16 Q That s fine.

17 Did any Dover School Board member ever speak to you
18 personally about correcting something you wrote?

19 A No, sir.

20 Q Did any board member ever complain directly to you
21 about something you wrote about a meeting?

22 A Nothing specific, no.

23 Q So you never had an interaction with, for instance,
24 Ms. Geesey?

25 A I do remember speaking with Ms. Geesey, yes, I do.

1 Q And did you speak with her about a complaint she
2 had?

3 A It was about a different article. She was upset
4 that the people were requesting tapes but, again, she didn't
5 ask me for a correction.

6 Q And did she specify what her complaint was?

7 MR. BENN: Your Honor, I object. I think
8 Mr. Maldonado has indicated that it's a different article.
9 It's nothing he testified about this morning.

10 MR. WALCZAK: Your Honor, that's fine, I'll
11 withdraw the question.

12 THE COURT: All right.

13 BY MR. WALCZAK:

14 Q So you never got specific complaints about articles
15 you wrote about the Dover Area School District?

16 A I was never asked to make a correction.

17 Q And are you aware of whether your editors or
18 publishers were ever asked to make a retraction about any of
19 the articles you wrote about the school board?

20 A They were not asked to make any corrections.

21 MR. WALCZAK: I have no further questions.

22 THE COURT: Thank you, Mr. Walczak.

23 Mr. White. We'll ask you not to tear the
24 microphone from its moorings before you commence your cross
25 examination.

1 MR. WHITE: I can break things, I just can't fix
2 them.

3 THE COURT: You may proceed when ready.

4 MR. WHITE: Thank you.

5 Your Honor, I --

6 THE COURT: You tried that again, did you?

7 MR. WHITE: This would be one of these things that
8 shows up in a Bar Journal article. Yeah.

9 THE COURT: Either that or America's Funniest Home
10 Videos.

11 MR. WHITE: I apologize.

12 THE COURT: Mr. Thompson, please don't let Mr.
13 White touch anything at counsel table for the rest of the
14 day.

15 MR. WHITE: Well, at least the reporters have their
16 lead story.

17 THE COURT: That remains to be seen.

18 CROSS EXAMINATION

19 BY MR. WHITE:

20 Q Back to being serious now.

21 Mr. Maldonado, your primary occupation is running
22 the sandwich shop?

23 A It's pretty much a tie between my writing and
24 running the sandwich shop.

25 Q And you're -- you don't have any formal journalism

1 training though, correct?

2 A No, sir.

3 Q And freelancing, I know you love to write, but it s
4 also a way to supplement your income, correct?

5 A That is correct.

6 Q And depending on where the article appears in the
7 paper, determines the amount of money you re paid per
8 article, right?

9 A Yes.

10 Q So a front page story gets you about \$65?

11 A Six -- a story that runs right on the front page,
12 1A, as it s called, is \$67.50.

13 Q And then if it runs on a cover of one of the
14 sections, the local sections, it s about \$60?

15 A \$62.50.

16 Q And then just your average story is around \$50,
17 right?

18 A Somewhere in that ball park, yes.

19 Q And it s the editors who decide where in the
20 newspaper your stories will run, correct?

21 A That is correct.

22 Q Now, although you haven t been in the courtroom
23 previously, you ve been following this case through the
24 newspapers?

25 A I had read some of it earlier as the trial got off

1 the ground, but in the last couple weeks I ve made an effort
2 not to follow the trial.

3 Q And during the break before you testified, did you
4 speak to Heidi Bubb about her testimony?

5 A No, sir.

6 Q Did anyone speak to you about her testimony?

7 A No, sir.

8 Q And you read the editorial page of your newspaper?

9 A I have read the editorial pages, yes.

10 Q So you understand the position the newspaper takes
11 on various subjects?

12 MR. BENN: Your Honor, I would put the same
13 objection that I did with Ms. Bubb s testimony.

14 MR. WHITE: That was my last question.

15 THE COURT: I ll allow that question. I ll
16 overrule the objection.

17 THE WITNESS: I understand that people take
18 different positions on different issues in our paper.

19 BY MR. WHITE:

20 Q So you understand the position the editorial page
21 will take on certain issues, correct?

22 A Could you be more specific, sir?

23 Q Well, your newspaper has an editorial page,
24 correct?

25 A Yes.

1 Q Editorial pages are generally the position of the
2 newspaper?

3 THE COURT: I m going to consider that that s a
4 continuing objection. I ll sustain the objection. And I
5 think he answered that question with his last answer, so
6 let s move on.

7 MR. WHITE: I ll move on.

8 BY MR. WHITE:

9 Q Now, when you attend Dover Area School Board
10 meetings -- when I refer to a school board meeting, that s
11 what I m talking about, Dover School Board meetings.

12 A Yes.

13 Q You don t tape record the meetings, do you?

14 A No, I do not.

15 Q You don t videotape record them either?

16 A No, I do not.

17 Q So you just take handwritten notes?

18 A That is correct.

19 Q And you don t write down everything that was said
20 during the meeting, do you?

21 A No, sir.

22 Q And you don t write down verbatim statements of
23 everything that was said in the meeting either, do you?

24 A Not of everything, no.

25 Q So you sometimes have to summarize in your notes

1 what was being said?

2 A I have to paraphrase to the best of my ability.

3 Q And paraphrasing would be just your interpretation
4 of what someone said, correct?

5 A A paraphrase means that those words were said but
6 not necessarily in the form that I placed them in the paper.

7 Q And do you ever have the person who you've quoted
8 in your notes verify the accuracy of those quotes?

9 A No, I do not.

10 Q Do you have the person who you are paraphrasing
11 verify the accuracy of your paraphrasing of what they said?

12 A No, sir.

13 Q Do you have the person, when you do eventually
14 write the article, do you have the person verify the
15 accuracy of a quotation you attribute to that person in the
16 article?

17 A No, sir.

18 Q Do you have the person verify a paraphrasing that
19 you attribute to that person in the article?

20 A No, sir.

21 Q Do you have the person verify the context in which
22 you've set forth their quotation in an article you write?

23 A No, sir.

24 Q Do you have the person verify the context of the
25 summary of the paraphrasing that you've attributed to that

1 person in the context of the article?

2 A I write the articles and send it to my editor.

3 Q Now, the notes -- so, in other words, the answer is
4 no?

5 A No.

6 Q The notes that you take at these meetings, you
7 destroy those as a matter of practice roughly 30 days or so
8 after?

9 A That is correct.

10 Q And you don't have any notes from the 2004 school
11 board meetings, do you?

12 A No, sir.

13 Q So the defendants, we haven't been able to look at
14 your notes, have we?

15 A No.

16 Q Now, school board meetings for the Dover School
17 Board, they generally last a couple of hours?

18 A If I had to average it out I would say anywhere
19 from two to three hours.

20 Q And you sit in the front row of those meetings?

21 A Yes.

22 Q And Heidi Bubb also sits in the front row
23 generally?

24 A I can't tell you where Heidi sits from meeting to
25 meeting.

1 Q Do you ever compare your notes with Heidi during
2 meetings?

3 A No, I do not.

4 Q Do you ever step out of a school board meeting to
5 go to the bathroom, for example?

6 A Yes, I do.

7 Q When you come back in do you ask people what you
8 missed?

9 A No.

10 Q Do you also step out of meetings to conduct
11 interviews?

12 A Yes, I do.

13 Q So you re not always in the school board meeting?

14 A Sometimes if a person I need to interview is
15 leaving before the meeting ends and I need to catch that
16 person, yes, I will step out and do an interview.

17 Q So the answer to my question is yes, you re not
18 always in the --

19 A I am not always in the room, that is correct.

20 Q And during these school board meetings there are
21 several topics that are generally discussed?

22 A Yes.

23 Q So there s usually more than just one item on the
24 agenda?

25 A Yes.

1 Q And during the meeting several people are speaking,
2 for example, you ll have school board members who will talk,
3 correct?

4 A Yes.

5 Q And then you ll have members of the public who get
6 a chance to speak, correct?

7 A Yes.

8 Q And when these people are speaking during school
9 board meetings, are they under oath?

10 A Not that I know of.

11 Q And sometimes you speak to people after meetings,
12 correct?

13 A Yes.

14 Q Are those people under oath when you re speaking to
15 them?

16 A Do I make them raise their hand and swear on the
17 Bible to tell me the truth, the whole truth, and nothing but
18 the truth? No, I don t do that, so if that is your
19 definition of being under oath.

20 Q So as far as you know these people aren t under
21 oath either in the meeting or after the meeting?

22 A Well, I m certainly hoping they are telling me the
23 truth.

24 Q That wasn t my question. They re not under oath,
25 correct?

1 A They are not under oath, no.

2 Q Now, when you write these articles for the school
3 board meetings, you re not describing everything that took
4 place during the meeting, of course.

5 A No, I m not.

6 Q And when you write the articles about the school
7 board meetings, you re not including all the statements made
8 during those meetings either, are you?

9 A No, I m not.

10 Q And in writing these articles about the school
11 board meetings, in particular the Dover School Board, you re
12 not including all the topics discussed during the meeting
13 either.

14 A That is correct.

15 Q And in writing the articles about the school board,
16 you don t include all of the comments people are making
17 about the various topics discussed.

18 A No, sir.

19 Q Now, your articles that you ve gone over with
20 plaintiff s counsel today, they include statements that you
21 attribute to school board members in particular that
22 occurred during the meeting, correct?

23 A During and after the meeting, yes.

24 Q So after --

25 A Or on a phone call if --

1 Q Well, right now I m just asking you about
2 statements that occurred during the meeting.

3 A Okay.

4 Q That s correct, right?

5 A I m sorry, could you repeat your question?

6 Q Your articles are attributing statements or
7 summaries paraphrasing of school board members that took
8 place during the public meeting.

9 A Some of the articles paraphrase or quote people
10 after the meetings, some of them paraphrase or quote them
11 the next day via phone calls or trips that I might have made
12 to the district.

13 Q That in addition to what took place in the meeting?

14 A In addition to what took place at the meeting.

15 Q It took us a while but we finally got it.

16 So when you re writing these articles about the
17 school board meetings, you re just capturing only part of
18 what happened during the meeting, correct?

19 A Yes.

20 Q And you re the one who selects what part of the
21 school board meeting you re going to write about in that
22 article, correct?

23 A Yes.

24 Q And you select which quotes that you want to put
25 into the articles about those meetings?

1 A Yes, I do.

2 Q And you re the one who decides when to paraphrase
3 or summarize statements made by people during meetings?

4 A Yes, I am.

5 Q And that s also counting both my questions, other
6 statements you ve heard from people after a meeting on the
7 telephone, et cetera?

8 A Yes.

9 Q Now, when you re attributing these summaries or
10 paraphrasing, again, that s just your interpretation of what
11 the people were saying, correct?

12 A It s -- it s a summary of the words that were
13 spoken.

14 Q But based on how you perceived the statements,
15 correct?

16 A It is a summary of the words that were spoken.

17 Q Based upon your perceptions though, right?

18 A I will not --

19 MR. BENN: Your Honor, we re not dealing with
20 perceptions. I think he s answered the question. It s
21 based upon his understanding of what people have stated.

22 THE COURT: Mr. White.

23 MR. WHITE: As Mr. Benn just said, it s based upon
24 your understanding of what people said, correct?

25 THE WITNESS: That is correct.

1 MR. WHITE: That is just another way of saying
2 perception then.

3 THE COURT: I m not sure that s true, and that may
4 be inconsistent with the order. The second question is not
5 objectionable. The first question I think was. I ll note
6 that.

7 BY MR. WHITE:

8 Q You sometimes, in your articles, attribute
9 statements to people based on the questions you ve asked
10 them, correct?

11 A Yes.

12 MR. WHITE: I apologize, Your Honor.

13 BY MR. WHITE:

14 Q Articles you write include statements school board
15 members that occurred after the meeting, had telephone
16 conversations with them, things like that?

17 A Could you repeat that, please?

18 Q Some of the statements, as we talked about, are
19 statements made to you by school board or school official
20 members after -- after a meeting?

21 A Yes, sir.

22 Q Now, when you write your articles, you don t have
23 the people -- and we went over this before, but just to make
24 clear -- when you write an article you don t have the person
25 you quoted in the article verify the accuracy of that quote,

1 right?

2 A No, sir.

3 Q Nor do you have the person verify the accuracy of
4 the context of the quote in your particular article?

5 A No, sir.

6 Q Nor do you have the person who you re summarizing
7 or paraphrasing verify the accuracy of that paraphrasing,
8 correct?

9 A We do not allow our subjects to editorialize our
10 stories, no, sir.

11 Q I m asking about verifying.

12 A No.

13 Q After you write your articles you submit the
14 article to the editors of your paper.

15 A Yes.

16 Q And you just send it by e-mail to a number of
17 editors, and whoever happens to be on the shift that day
18 reviews and edits the article, is that right?

19 A That is correct.

20 Q And it s the editor who writes the title of the
21 article.

22 A Yes.

23 Q And any subtitles, also is the editor who writes
24 them?

25 A Yes.

1 Q And now, you re not aware of the amount of editing
2 that goes into your articles, correct, as we went over
3 during your deposition?

4 A When I write my articles, typically when I read
5 them in the paper, there s not much. Typically what I write
6 ends up in the paper?

7 Q My question was, but you re not aware of the amount
8 of editing that goes into it, though?

9 A No, once they end up in the newsroom, no.

10 Q Also, and after the article is edited, you don t
11 review it again before it s published in the paper, right?

12 A No.

13 Q If you can look at exhibit 790, please.

14 This exhibit is dealing with the June 7th, 2004
15 school board meeting, correct?

16 A Yes, it is.

17 Q And the subtitle that says, "A Board Member said a
18 Book was Rejected Because it Didn t Offer Creationism," that
19 was written by the editor?

20 A It says "A Board Member said a Book was Rejected
21 Because it Didn t Offer Creationism," yes, that would have
22 been written by an editor.

23 Q The debate that was taking place at this June 7th
24 meeting, that was about which textbook to use in the
25 classroom for the biology students, is that right?

1 A Yes.

2 Q And you re saying that the word creationism was
3 mentioned by some board members, in particular, Mr. Bonsell
4 and Mr. Buckingham?

5 A Once the word creationism was introduced into
6 discussion, all of the board members would have used it,
7 whoever spoke at that meeting.

8 Q Now, in your article the board members you referred
9 to are Mr. Bonsell and Mr. Buckingham, correct?

10 A That is correct.

11 Q So you don t have any references to any other board
12 members in your article, especially with regard to the use
13 of the word creationism, correct?

14 A No, sir.

15 Q Now, your article here, you have some quotes that
16 are attributed to board members, right?

17 A Yes.

18 Q So, for example, you have a quote attributed in the
19 second column to Mr. Buckingham, correct?

20 A Yes.

21 Q And quotes then are verbatim statements of what the
22 person said, right?

23 A Yes.

24 Q So when you have it in quotes, that means it s a
25 word-for-word accurate statement, correct?

1 A Yes.

2 Q In this article the only time you use the word
3 creationism, apart from the subtitle, is in circumstances
4 where the word is not in quotations, correct? You want to
5 look at the article?

6 A That is correct.

7 Q Now, you re saying that there were several board
8 members who -- or I think you said all the board members
9 were using the word creationism during this meeting, is that
10 right?

11 A Whoever would have participated in this part of the
12 discussion. Not all the board members necessarily chime in,
13 but all of them who would have spoke on it.

14 Q And then there were -- were there any members of
15 the public who spoke during this meeting?

16 A The only one I had in my article was Max Pell, but
17 there may have been others.

18 Q Now, in your article though, nowhere is the word
19 creationism used in a quoted statement attributed to a
20 school board member, correct?

21 A That is correct.

22 Q And that s true even though part of the discussion
23 at this meeting, according to you, dealt with creationism as
24 it relates to a textbook, is that right?

25 A Yes.

1 Q Now, when you don't have statements in this
2 particular article that are in quotes, you're saying that's
3 a summary or a paraphrasing?

4 A A paraphrasing, yes.

5 Q If you can look to the next article, which I
6 believe is 791, exhibit 791.

7 Now, I'm correct that this would be a follow-up
8 article to the June 7, 2004 meeting?

9 A Yes.

10 Q And I believe you had earlier said that this is
11 a -- to get a feel for the man-on-the-street type of an
12 article?

13 A Yes.

14 Q And that man-on-the-street reaction, that's based
15 upon the article you had written which we just discussed,
16 exhibit 790?

17 A And any other knowledge they may have.

18 Q The people in the public who you spoke to, these
19 are people you just randomly selected?

20 A That is correct.

21 Q And these were people in the community of Dover?

22 A Yes.

23 Q Dover has about what, 20,000 residents?

24 A I don't know that. I'm not a census taker.

25 Q But it has thousands of residents as far as you

1 know?

2 A I don t know.

3 Q Didn t you grow up in the York area?

4 A Yes, but I don t count the people that live there.

5 Q But you cover the Dover area for the newspaper,
6 right?

7 A Yes, I do.

8 Q But you don t have any knowledge as far as number
9 of people who live in the area?

10 A No, sir.

11 Q Okay. So assume to say that there are more than a
12 handful of people. All in your article there you just spoke
13 to a couple of people to gather their reaction to your
14 article or any other information they may have, correct?

15 A Well, I spoke with more than a couple. I would
16 have been there about two hours and spoke with a lot of
17 people.

18 Q So if you spoke to a lot of people then, all you
19 mentioned in your article are a couple of the people, right?

20 A I only had so much space, so, yes.

21 Q So with that you selected, because you don t have a
22 lot of space, which people you would quote in this article,
23 right?

24 A Yes.

25 Q And which people whose statements you would

1 paraphrase, is that right?

2 A Yes.

3 Q So you selected how this article would be
4 structured, right?

5 A Yes.

6 Q Now, in this article, again, you had mentioned that
7 at the June 7th, 2004 meeting, that in particular
8 Mr. Buckingham and Mr. Bonsell had mentioned the words
9 creation or creationism. And this is a follow up to that
10 June 7th meeting, correct?

11 A Yes.

12 Q And again, with regard to those two individuals, in
13 this follow-up piece, do you have any statements that you
14 have quoted from them, direct quotes, where the word
15 creationism or creation is included? I m talking about
16 Mr. Bonsell and Mr. Buckingham.

17 A I m sorry, could you rephrase that question?

18 Q I m saying with regard to Mr. Bonsell and
19 Mr. Buckingham, in this article, exhibit 791, which is a
20 follow up to the June 7th meeting, do you have any direct
21 quotes that you can attribute to those two men where the
22 word creationism or creation is stated within those quotes?

23 A Within this article?

24 Q Yes.

25 A I don t believe so.

1 Q Now, your conversation with Mr. Weinrich that is
2 the bottom part of this article, that was a conversation
3 that you had after the June 7th, 2004 meeting, correct?

4 A That is correct.

5 Q And was that a conversation over the phone, do you
6 recall?

7 A I believe it was over the phone.

8 Q So that s a -- a give and take conversation you had
9 with him, right?

10 A It was a conversation that I had with him.

11 Q On this -- on this exhibit there s a box in the
12 middle that says, "On the web, Pennsylvania s academic
13 standards for science and technology which allow for
14 teaching of creationism can be found at," and then it gives
15 a web site for the Commonwealth of Pennsylvania s, looks
16 like, education department. Did you prepare that box?

17 A No.

18 Q That s prepared by whom?

19 A Whichever editor would have worked on this story.

20 Q When you speak to these people who -- for the
21 man-on-the-street, how do you confirm that they re actually
22 residents of Dover?

23 A I ask them.

24 Q You ask them. You don t check their driver s
25 license or anything like that?

1 A No, I don't go that far.

2 Q Please look at the next exhibit, which is 792. 792
3 is an article that appeared June 14th, 2004 in your York
4 Daily Record, correct?

5 A June 14th, 2004, yes.

6 Q And this is another follow-up article of the
7 June 7th, 2004 meeting?

8 A That is correct.

9 Q And with these follow-up pieces, is it that the
10 editors ask you to write the follow-up articles?

11 A I believe in this case it was, yes.

12 Q And again, it's the editor who writes the heading
13 and the -- or the title and the subheading, correct?

14 A That is correct.

15 Q And does that also apply to the small box that's in
16 the middle that says "If You Go"?

17 A Yes.

18 Q Now, you relied on your notes and memory from the
19 June 7th, 2004 meeting in preparing this article?

20 A That is correct.

21 Q And some of the -- for example, you also did in
22 this article another man-on-the-street interview, you
23 interviewed a few teenagers, it looks to me, like Mike
24 Johnson, David Storms, on column three?

25 A Yes.

1 Q And you just picked them out randomly?

2 A That is correct.

3 Q Had you spoken to other men on the street besides
4 Mr. Storms and Mr. Johnson?

5 A I can t recall how many people I spoke to but, yes,
6 I spoke to more than them.

7 Q But those are the ones you focussed on in your
8 article?

9 A Yes.

10 Q And also in this article, as it relates to comments
11 made at the June 7, 2004 school board meeting by school
12 board members, you don t have any direct quotes from that
13 meeting attributed to school board members where the word
14 creationism is part of the quote.

15 A That is correct.

16 Q And that s true also even though the focus of the
17 June 7th meeting, according to your articles, was the
18 discussion of creationism --

19 A Yes.

20 Q -- as it relates to the textbook, right?

21 A Yes.

22 Q If you can turn back to exhibit 790, please. On
23 the far right column, I believe that s column four, you have
24 the quote -- direct quote you attribute to Mr. Buckingham
25 dealing with Muslim beliefs. Again, that was after the

1 meeting in a conversation you had with him?

2 A At his chair after the meeting, yes.

3 Q So those are responding to questions you were
4 posing to him?

5 A That is correct.

6 Q Please go to exhibit 793.

7 This article was published on June 15th, 2004, so
8 this is dealing with the meeting the day before the school
9 board, June 14th, 2004?

10 A Yes.

11 Q And according to the subtitle, which the editor
12 would have written, correct?

13 A Yes.

14 Q Says, "Teaching of Creationism or Evolution was the
15 Topic Again at the Dover Area School Board Meeting."

16 Now, when you send in your articles, do you put a
17 proposed title on the article?

18 A No.

19 Q So the editor is writing the title based upon what
20 your article talks about, right?

21 A Yes.

22 Q And they re writing the title to get the attention
23 of the reader, right?

24 A Yes.

25 Q Now, according to this article there were roughly

1 90 people who were in attendance. And after -- after
2 meetings -- well, let me ask you this. The center column,
3 it talks about Charlotte Buckingham and statements you
4 attribute to her. She made these statements during the
5 public comment portion of the meeting?

6 A Yes.

7 Q And this is a time when anyone from the public can
8 get up and say anything?

9 A Yes.

10 Q And she s not a member of the school board, is she?

11 A No.

12 Q And you have a quote at the bottom of the first
13 column from Mr. Buckingham, quote, 2,000 years ago someone
14 died on a cross, end quote. Quote, Can t someone take a
15 stand for him.

16 Now, Mr. Buckingham made the comment at the
17 June 14th meeting?

18 A Yes.

19 Q And did he only make that comment once during the
20 June 14th meeting?

21 A I can t recall. Sometimes they repeated
22 themselves, sometimes they didn t.

23 Q So you don t recall whether he did or didn t?

24 A I don t know whether he said this once, twice,
25 three times, I just know that he said it.

1 Q With this article that we re talking about, exhibit
2 793, and the other ones we ve talked about today so far,
3 after you write the article you don t verify with anyone the
4 quotes that you attribute to them, correct?

5 A No.

6 Q And you don t verify the accuracy of any
7 statements, whether quoted or not, with the person whom
8 you ve attributed those statements?

9 A No.

10 Q And also you don t verify the accuracy of the
11 context of any statements with the person to whom you ve
12 attributed those statements, correct?

13 A No.

14 Q These articles you write, this is again what you
15 think would make the best story, correct?

16 A I try to pick the most newsworthy material to
17 present to our readers.

18 Q Based upon your selection of the events that
19 occurred at the meeting, correct?

20 A Based on the information that is presented at the
21 meetings, I try to pick the most newsworthy items for our
22 newspaper.

23 Q The next exhibit, 794. This is with regard to the
24 July -- July 12th, 2004 meeting.

25 A Yes.

1 Q And again -- well, let me go back. Let s go back
2 to 793, I m sorry. 793 deals with the June 14th, 2004
3 meeting, okay. And according to the article, at least the
4 title of the article, "Teaching of Creationism was Again a
5 Topic of Discussion at the Meeting," right?

6 A Yes.

7 Q Do you have any quotes from school board members
8 with the inclusion of the word creation or creationism in
9 those verbatim quotes from the meeting?

10 A I would like a moment to read the article, please.
11 (Pause.) No.

12 Q Do you have any -- in the articles -- nowhere in
13 the article does there appear a quoted statement from a
14 school board member where the word creationism is used in
15 the quote, correct?

16 A No.

17 Q Nowhere in this article is there a quoted statement
18 from a school official where the word creationism appears in
19 a quote either, is there?

20 A No.

21 Q And this is true even though the teaching of
22 creationism, according to this subtitle, was a topic at the
23 school board meeting, right?

24 A Creationism was a topic of discussion during the
25 school board meeting.

1 Q My answer -- my question though was, even though
2 that is the topic of the meeting, in your article you don t
3 have any direct quotes from school board members or school
4 officials where the word creationism is part of the quote.

5 A There is no quote that includes the word creation,
6 however, creationism was a part of that discussion that
7 evening, and that would be an accurate description of what
8 took place.

9 Q So at this meeting -- how long did this meeting
10 last, do you remember?

11 A I don t recall.

12 Q You said usually it lasts a couple -- couple, three
13 hours?

14 A I don t recall how long this meeting was.

15 Q As a general rule you said earlier that they last,
16 you know, two or so hours, right?

17 A That is correct.

18 Q And you re taking notes throughout the entire
19 meeting, correct?

20 A At most meetings, yes.

21 Q I m talking, do you remember the June 14th
22 meeting?

23 A Yes.

24 Q Okay. And you re taking notes during this time, is
25 that correct?

1 A That is correct.

2 Q And you said you re trying to put in your notes the
3 most newsworthy items, right?

4 A I ve said that repeatedly, yes.

5 Q And you re trying to also quote verbatimly any of
6 the key statements made by the people who were speaking at
7 the meeting, right?

8 A Yes.

9 Q Just like for Mr. Buckingham you have the quote,
10 2,000 years ago, et cetera, that s in quotes, right?

11 A Yes.

12 Q So you put that in the article because you consider
13 that newsworthy, right?

14 A Yes.

15 Q But, again, you don t have any of those newsworthy
16 quotes in this article dealing with a statement -- quoted
17 statement by a school board member or official where the
18 word creationism is part of the quote, right?

19 A That is correct.

20 Q 794, please. If you could look at that. This is
21 again -- right, so we re talking about -- I m having a hard
22 time with my vision today. If -- were we going over 793
23 previously? Is that . . .

24 A We were on 793.

25 Q 794, please. This is the July 12th, 2004

1 meeting, and in this article you re talking about the term
2 intelligent design, correct?

3 A Just give me a moment. Yes.

4 Q And so intelligent design is mentioned at the
5 July 12th, 2004 meeting, is that right?

6 A Yes.

7 Q And that s mentioned by school board members,
8 correct?

9 A Well, according to my article it says that, "There
10 were several reasons why others were not selected, Baksa
11 said including readability, layout, content, as it relates
12 to the curriculum." He said -- I m sorry.

13 "There were several reasons why the others were not
14 selected, Baksa said, including readability, layout, and
15 content as it is related to curriculum. He said neither
16 creation nor intelligent design were a part of any books
17 that he reviewed."

18 Q But at the meeting, July 12th meeting, the term
19 intelligent design had been used, is that right?

20 A I believe so.

21 Q And also at this July 12th meeting, where they re
22 discussing textbooks and books, you don t have any direct
23 quotes from any school board member/official that includes
24 the word creationism in a verbatim quote, is that right?

25 A That is correct.

1 Q Number exhibit 795, please. 795 is the -- dealing
2 with the August 2nd, 2004 meeting, correct?

3 A That is correct.

4 Q And at the -- at the 8 -- August 2nd, 2004 meeting,
5 intelligent design and *Pandas and People* are being discussed
6 according to your article, correct?

7 A That is correct.

8 Q And in the first column of the article, after the
9 quote, you have Mr. Buckingham talking about approval *Of*
10 *Pandas and People*, which advocates, quote, intelligent
11 design theory, end quote. So that s what Mr. Buckingham had
12 said?

13 A I m sorry, could you repeat your question?

14 Q Mr. Buckingham had referred to *Pandas and People* as
15 an intelligent design book?

16 A Yes.

17 Q Mr. Buckingham had not referred to *Pandas and*
18 *People* as a creationist book, correct?

19 A Not that I can recall, no.

20 Q Now, during this meeting, the school board members
21 were debating the adoption of the textbook *Biology* by
22 Prentice Hall, correct?

23 A Yes.

24 Q And that s the primary textbook for the students as
25 far as you know from these meetings?

1 A Yes.

2 Q And again, during this meeting based on your notes
3 in your article here, you don t have any direct quotations
4 from people talking about creationism, correct?

5 A That is correct.

6 Q The next exhibit you were directed to earlier was
7 exhibit 797. This is an article dealing with the
8 October 18th, 2004 school board meeting, correct?

9 A Yes.

10 Q Now, at this school board meeting, did you attend
11 the entire meeting?

12 A I don t recall.

13 Q You don t remember whether you were there for the
14 entire meeting, right?

15 A I do not recall.

16 Q At the October 18th, 2004 meeting, the discussion
17 dealt with intelligent design being placed into the biology
18 curriculum, correct?

19 A Yes.

20 Q And creationism was not mentioned at this meeting,
21 according to this article, right?

22 A Not that I can recall.

23 Q And this last article, exhibit 798, it was Lori
24 Liebo, who s also on the byline, she s the one who wrote the
25 bulk of the article.

1 A In reading this article I believe this is mostly
2 her work.

3 Q Now, during -- during school board meetings, school
4 board members would publicly accuse you and the media of
5 lying in their reporting?

6 A They would make statements to say that the media
7 had been inaccurate in its reporting.

8 Q Do you remember them making statements about the
9 media having an agenda?

10 MR. BENN: Are we talking about any particular
11 school board meeting?

12 MR. WHITE: Talking about during the meetings that
13 he had attended during 2004 as related to these articles.

14 THE WITNESS: I cannot recall if the school board
15 began making those comments before this final article on
16 October 20th or not, I do not recall.

17 BY MR. WHITE:

18 Q You do recall at the meetings criticism about the
19 reporting, correct?

20 A I do not know if they took place during the
21 timeframe of the stories that are in front of me.

22 Q You remember such criticism being made, correct?

23 A I do remember those criticisms being made, but I do
24 not know if they took place during the timeframe of these
25 articles.

1 Q And during the timeframe of these articles, board
2 members had come up to you individually and complained about
3 your reporting?

4 A They had complained about the media in general.

5 Q Had any of them come up to you and said to you that
6 they wanted a correction?

7 A No, they did not.

8 Q Had any of them come up to you and said to you, you
9 got the story wrong, Joe?

10 A No. Well, they were saying that we got the story
11 wrong, but they would not mention any specifics that they
12 wanted corrections of.

13 MR. WHITE: Nothing further, Your Honor.

14 MR. WALCZAK: I have nothing further.

15 THE COURT: No redirect. All right, can we excuse
16 this witness by agreement of counsel?

17 MR. WHITE: That s fine by me.

18 THE COURT: Sir, you are free to go, that completes
19 your testimony.

20 All right, let s take up some exhibits. We -- did
21 you talk to them about Nilsen?

22 MR. WHITE: Your Honor, is it possible, I don t
23 mean to stall the day, but is it possible to do this
24 afternoon lunch because I know Mr. Gillen wanted to be here
25 for that.

1 THE COURT: Well, that s fine, and -- on
2 Dr. Nilsen s testimony?

3 MR. WHITE: On Nilsen s testimony and all of the
4 exhibits.

5 THE COURT: All of the -- well, let s talk about
6 how we re going to do it just as a precursor, that s fine.
7 But on Dr. Nilsen s testimony what I had asked Liz to
8 mention previously, and I ll just reiterate, we have quite a
9 few exhibits relating to Dr. Nilsen.

10 If you would be kind enough to take some time over
11 the lunch hour, and if you haven t done this already, and
12 somehow highlight for me the exhibits that can be stipulated
13 based on the master list that we have circulated. And then
14 we can argue only about those exhibits that are
15 controversial as they relate to Dr. Nilsen.

16 With respect to Mr. Buckingham s testimony, there
17 are fewer exhibits. You might -- we do have a master list
18 here. Have you distributed that to counsel?

19 THE DEPUTY CLERK: Yes.

20 THE COURT: You might want to do the same thing so
21 that we can catch up with Mr. Buckingham s exhibits as well.

22 MR. WHITE: Does Mr. Gillen have that?

23 THE DEPUTY CLERK: It s on your desk there.

24 MR. WHITE: Thank you.

25 THE COURT: So I ll ask you to coalesce and see if

1 you could work that out.

2 Now, I want to talk for a minute about the -- as a
3 precursor to argument on the news articles, it appears to
4 me, and I direct this first to the plaintiffs, it appears to
5 me that we have newspaper articles that are being introduced
6 or attempt to introduce newspaper articles for two purposes,
7 mainly, one is the truth of the contents, some of the
8 contents of the articles, in particular as that goes to
9 certain statements that are in dispute, mainly it appears
10 statements by Mr. Buckingham, but possibly statements by
11 others.

12 The second purpose appears to be to introduce the
13 newspaper articles under the effect prong and the *Lemon*
14 test. And it was argued previously that -- and controverted
15 by the defendants that because it -- because the articles
16 are introduced on the effect prong, if I understood your
17 argument, that the truth is not at issue.

18 Do I have that right from the plaintiffs
19 standpoint?

20 MR. WALCZAK: Your Honor, yes, we believe they come
21 in both for the truth of what s asserted in the articles,
22 that in fact it s non-hearsay under Rule 801, but even if it
23 was hearsay, if there s ever a situation that meets the 807
24 residual hearsay exception, I mean this is certainly it.
25 I m happy to argue that.

1 THE COURT: Well, I don't -- you know, I want to
2 refrain, consistent with what I said to Mr. White and I
3 think Mr. Gillen wants to be a party to this argument, so
4 I'm not pressing you necessarily to argue it, I'm just
5 trying to get squared away before we start to argue.

6 Where in 801 though, by the way, are you hanging
7 your hat?

8 MR. WALCZAK: I am hanging my hat, so to speak, on
9 801(d)(1)(B), prior statement by a witness where the
10 declarant testifies at the trial or hearing, is subject to
11 cross examination concerning this statement, and the
12 statement is -- and I'm going down to (B), consistent with
13 the declarant's testimony; and it's offered to rebut an
14 express or implied charge against the declarant of recent
15 fabrication or improper influence or motive.

16 THE COURT: And you're arguing in the alternative
17 807, is that correct?

18 MR. WALCZAK: That's correct, Your Honor. But
19 coming back to the original question, yes, I mean we are
20 offering these 14 articles that -- I believe it's 16
21 articles that were testified to by Ms. Bernard-Bubb and
22 Mr. Maldonado. We are offering those for the truth of the
23 matter asserted. We are offering all of the articles and
24 the letters and the editorials under the effects prong as
25 this is kind of the historical record that's out there. And

1 regardless of whether it s true or not, that s what was
2 reported, that s what the public would have read. And --

3 THE COURT: Well, let me ask you this, can you
4 identify in the -- now, you have articles -- those articles
5 in particular that go to the disputed statements, you can do
6 that?

7 MR. WALCZAK: I certainly can do that after lunch.

8 THE COURT: No, I don t mean now, but it s possible
9 for you to do that. I m sure that I can go over the
10 testimony and do it as well, but I would put that burden on
11 you because I think that we need to argue them in two
12 classifications. And I say this to the defendants as well.

13 I think to the extent that there are certain
14 articles that contain statements that are either disputed in
15 whole or in part by defendants witnesses and in the main it
16 appears Mr. Buckingham, but there may be others, I think we
17 need to take those and identify those and understand what it
18 is that we re talking about.

19 And then I recognize that there s an overlap, and
20 that those same articles you might seek to introduce under
21 the effect prong. And I m not sure under the endorsement
22 prong, but I frankly don t know how that would work with
23 newspaper articles, and that s an argument we ll leave for
24 another day. But I think we should be clear what it is that
25 we re doing.

1 Are you taking the position -- are the plaintiffs
2 taking the position that those articles that are not being
3 introduced to controvert denials by witnesses as they relate
4 to statements made, that the truth of those articles or
5 other parts of the articles, the truth is not at issue in
6 those articles? Are you saying they re not hearsay because
7 they don t go to the truth as they relate to the effect
8 prong?

9 MR. WALCZAK: Your Honor, we would argue that if --
10 of the 16 articles about which we heard testimony in the
11 last day, the entire article comes in for the truth of the
12 matter asserted. I mean this is, frankly, the best
13 historical record that we have. It s based on notes taken
14 contemporaneously by people who were there, who listened,
15 who wrote it down. And they have testified that what they
16 wrote down was truthful, it was accurate. There is a great
17 degree of reliability here and, frankly, you know, I m not
18 sure why we would exclude what is clearly the best
19 contemporaneous historical account of what happened in this
20 situation.

21 So we would offer it not just to rebut the
22 statements of the defendants, but we would offer these 16
23 articles in their entirety.

24 THE COURT: Well, I think you have to have a
25 purpose. I think to simply introduce them into the record

1 without a purpose, I will tell that you now, and I think
2 you re going to have to hone that argument a little bit so
3 to simply say they re the best historical record. Record of
4 what? I mean we have -- we have other testimony in as to
5 what happened at these meetings. And I want to be careful
6 how we approach this.

7 I fully recognize that you re, at least in part,
8 attempting to introduce the articles as they relate to these
9 disputed statements. But I think we need to have something
10 more than these are historical records of -- or the best
11 historical records of these events. I will tell you that
12 now, and you should think about what the balance of the
13 contents of these articles go to other than simply that
14 they re historical records. I m not entirely sure about
15 that. And I m not entirely sure of the relevance, although
16 I m not forestalling an argument on that basis.

17 MR. WALCZAK: Just, let me just observe, Your
18 Honor, that there are -- that the direct quotes are
19 relatively few in these articles. If -- if you actually
20 look at the articles, virtually every paragraph in there
21 that doesn t have a direct quote, indicates that
22 Mr. Buckingham said or reported. And so I don t think it s
23 difficult to distinguish the direct quotes from the
24 paraphrases. And there also have been disputes by the
25 defendants and will be more disputes I m quite sure as to

1 what happened at these meetings, not just what was said.

2 THE COURT: And I -- I understand that. And so
3 that -- that is entirely consistent with -- what you just
4 said is entirely consistent with my -- and is in fact is in
5 answer to my question. If you re introducing the articles
6 for disputed facts, in order to assist the Court in
7 resolving certain disputed facts, that s fine, but I -- and
8 I d have to go and review these articles one by one, but
9 arguably there are extraneous things in those articles that
10 would not go to disputed facts, and I -- I want to be
11 cautious about how we approach this.

12 And to simply say that the articles are a
13 historical record generally of what took place, I m not so
14 sure that that is a -- that that convinces me about the
15 admissibility. I think you just need to hone that. And by
16 saying this, I put the defendants on notice, and these are
17 some of the areas that I think we need to touch on as we
18 look at the -- as we look at the articles.

19 So we ll reserve further argument on the articles
20 until after the lunch hour.

21 Now, let me ask you, what do you have in mind for
22 testimony this afternoon? We re going to go back to
23 defendants case and --

24 MR. WHITE: I believe Mr. Gillen will call Heather
25 Geesey, that s my understanding.

1 THE COURT: We re going to finish -- are we
2 finishing Mr. Baksa at some point or not today?

3 MR. WHITE: As I understand it, Your Honor,
4 Mr. Gillen intends to call Heather Geesey as the next
5 witness, and then we re going to come back with Mr. Baksa
6 after that.

7 THE COURT: All right. So we ll pick up -- now, I
8 guess we can pick up with argument after lunch. What is
9 your pleasure? You want to -- you want to deal with this
10 now or do you want to keep going with witnesses?

11 MR. ROTHSCHILD: I think, given what is left, we
12 ought to keep pressing forward with witnesses in order to
13 get this case completed by --

14 MR. THOMPSON: Your Honor, I think you ve raised
15 some very crucial evidentiary points here. And I think a
16 part of that will really deal with the substantive aspects
17 of the law. We re talking about the effects prong. So I
18 think it s a matter that we should spend some time on to
19 give the Court our best opinion --

20 THE COURT: I would tend to agree with that. Why
21 don t we do this, taking into consideration what
22 Mr. Rothchild said and what you re saying, Mr. Thompson, I m
23 concerned that we re going to get too far behind and have
24 such an accumulation of exhibits that it will take us half a
25 day to get them in.

1 Let me ask your indulgence, other than the articles
2 that were rendered for Mr. Buckingham and Dr. Nilsen, which
3 remain in dispute, obviously, that s what we just talked
4 about, I would ask that you deal with Dr. Nilsen and Dr. --
5 or Dr. Nilsen and Mr. Buckingham over the lunch hour. Let s
6 try to get that done -- those two done, because I don t
7 think they re particularly controversial. Some may, but
8 let s argue the non-article exhibits after lunch.

9 We will reserve arguments, which obviously will be
10 a longer argument and could take quite some time on the
11 newspaper articles based on the intellectual discussion that
12 we ve had here and my telegraphing what my concerns are, and
13 we ll have to do it next week. I would just as soon accept
14 Mr. Rothchild s suggestion that we keep plowing through
15 testimony in the available time.

16 MR. THOMPSON: So that I understand it correctly,
17 Your Honor, you re holding in reserve until next week the
18 arguments on the articles and the effect it has on the --
19 the effects prong aspect of it and the truth for the matter
20 asserted in the articles?

21 THE COURT: Yeah, consistent with my preview, if
22 you will, I think we can tackle that next week. I don t
23 think there s any impediment to continuing with witnesses
24 and handling that next week, because it does really weave
25 into argument that I want -- I m going to want to hear at

1 the end of the case as we get into the effect prong, the
2 endorsement test, and things like that. So these all
3 combine at some point. And I don't think there's any reason
4 to wait.

5 If you -- or to do it today, and we can wait. If
6 you want to discuss among yourselves what you think an
7 appropriate intermezzo is next week that we can have some
8 extended argument on that, that's fine with me, I'll take it
9 whenever you want to -- whenever you want to address it.
10 Monday, if that works for everybody, but I understand there
11 is issues of witness availability, and we want to keep going
12 and keep taking testimony.

13 So we will do Buckingham and we will do Dr. Nilsen
14 after lunch, non-articles only; we'll reserve the articles.

15 MR. THOMPSON: Thank you.

16 THE COURT: Do you have a question?

17 MR. WHITE: My only question was, Your Honor, was
18 next week, is trial days Monday, Wednesday, Thursday,
19 Friday?

20 THE COURT: That's correct.

21 MR. WHITE: One of those days -- because I was
22 going back to Michigan. We'll talk about the best day.

23 THE COURT: Yeah, if you want -- you going to be
24 here?

25 MR. WHITE: Yeah, I just have to make arrangements

1 to come back, that s why if we had a particular day then I
2 can make the arrangements.

3 THE COURT: That s what I said, if you can reach an
4 agreement among yourselves, that s perfectly fine with me,
5 so that you re not inconvenienced. All right?

6 MR. WHITE: Yes, thank you, Judge.

7 THE COURT: Anything else before we recess?

8 MR. WALCZAK: No.

9 THE COURT: Why don t we recess until, let s say
10 1:30, and we ll pick up the testimony at 1:30, I guess with
11 Ms. Geesey this afternoon. We ll be in recess.

12 THE DEPUTY CLERK: All rise.

13 (Whereupon, a luncheon recess was taken from
14 12:15 p.m. to 1:39 p.m.)

15 THE COURT: Be seated, please. All right, based on
16 our discussion before lunch, we want to take some exhibits,
17 I guess, first things first.

18 Taking them in order of presentation, we would have
19 first Dr. Nilsen s exhibits. Now, have you had an
20 opportunity to look at that?

21 MR. ROTHSCHILD: We have, Your Honor.

22 MR. GILLEN: We have.

23 THE COURT: Do you want to -- do you have them
24 marked up or do you want to read off what you can agree to?

25 MR. GILLEN: Yes, Your Honor. We ve got agreement,

1 we re moving in everything except defendant s 84, which is
2 the Atlanta Journal article.

3 I would ask your indulgence with respect to 172 --
4 oh, actually Eric helped me, and I m only moving in from
5 defendant s 172, the documents with Bates pages 359, 360 and
6 341.

7 THE COURT: Okay.

8 MR. ROTHSCHILD: And, Your Honor, I have no
9 objection to any of the exhibits. I just wanted to make
10 sure the record was clear on D-153, transcript of the
11 October 18th meeting, that that transcript is not a
12 complete transcript even of the portion of the meeting that
13 was reported. I think we are in agreement on that.

14 MR. GILLEN: We are.

15 THE COURT: Say that again, Mr. Rothchild.

16 MR. ROTHSCHILD: The transcript of the
17 October 18th, 2004 meeting, which is defendant s 153, is
18 only a portion of what was actually record -- there was some
19 that was not recorded.

20 THE COURT: I recall that, that was the secretary
21 transcribed partial transcript.

22 MR. ROTHSCHILD: That s right. And just to be
23 clear, it s a partial transcript even of what was properly
24 recorded.

25 THE COURT: I understand. And I did understand

1 that. But as far as it s marked and what I get, your
2 comment goes to what it s labeled, not what I m going to
3 get.

4 MR. ROTHSCHILD: Correct.

5 THE COURT: All right. So let s just -- let s just
6 review then. It appears then on the defendant s side --
7 well, let me backup. How about on cross, we have a number
8 of exhibits on the master list here on cross and then one on
9 recross.

10 MR. ROTHSCHILD: On the list for cross, Your Honor,
11 we are moving in P-1 -- P-26. We will move in P-44, 53, 54,
12 which are articles, and I think they re reserved for your
13 later ruling.

14 THE COURT: Right.

15 MR. ROTHSCHILD: We re moving in P-70, P-109,
16 P-120, P-752, P-753 and P-758, and P-81. We are not moving
17 in at this time P-757, which was on Liz s list. And I
18 withdrew P-785, so we re not moving that in.

19 THE COURT: And there s no objection to the
20 exhibits as named then?

21 MR. GILLEN: Correct, Your Honor.

22 THE COURT: All right. And I don t think under
23 the -- under Dr. Nilsen s defendants exhibits there were no
24 articles referenced that I can see. So we ll admit then by
25 agreement of counsel, and check me on this so you make sure

1 that I have it, D-1 -- this is as to Dr. Nilsen, D-1, D-2,
2 D-3, D-6, D-8, D-14, D-15, D-22, D-23, D-26, D-28, D-30,
3 D-45, D-48, D-51, D-65, D-67, D-63, D-70, D-71, D-81, D-83.
4 D-84 is in controversy, is that correct?

5 MR. GILLEN: It s not being moved, Your Honor.

6 THE COURT: It s not moved -- not being moved then
7 at all? All right, so we re not going to argue that.
8 D-101, D-102, D-103, D-105, D-106, D-127, D-133, D-134,
9 D-135, D-137, D-138, D-139, D-142, D-153, D-172 Bates 359,
10 360 and 341 only.

11 MR. GILLEN: Correct, Your Honor.

12 THE COURT: Is that correct?

13 D-193, D-283 and D-288. Those are defendants
14 exhibits and they are admitted.

15 On cross, plaintiffs exhibits P-26, P-70. We re
16 reserving argument and we will not admit at this time P-44,
17 P-53, P-54. As I noted, P-70 is in. P-109, P-120, P-752,
18 P-753 and P-758 and P-81, all are admitted without
19 objection.

20 Does that cover all of Dr. Nilsen s exhibits?

21 MR. ROTHSCHILD: Yes, Your Honor.

22 THE COURT: And, again, we ll reserve the issue of
23 the admissibility of the articles.

24 Now, with respect to Mr. Buckingham, if we take out
25 the articles, do we have an agreement on the other exhibits

1 for Mr. Buckingham?

2 MR. HARVEY: We do, Your Honor, with one exception.
3 The defendants are objecting to the admission of the Fox 43
4 clip. And it s our position that it s clearly authentic, as
5 no issue of authenticity was raised prior to trial, although
6 we listed it. Further, Mr. Buckingham admitted that was him
7 on the tape speaking, and he admitted that he was speaking
8 to a television reporter from Fox 43, and therefore it s an
9 admission as well. So there s no basis to exclude that from
10 evidence.

11 THE COURT: Well, let s take the other ones and
12 we ll come back to that then. P-43 would be the minutes.
13 Then the articles follow; we ll hold back on the articles.
14 P-67, P-68, P-80, P-81, P-88, we re going to argue P-145;
15 P-821, P-819 -- no, that s an article as well, so we ll
16 reserve that. So the listed exhibits, am I correct?

17 MR. HARVEY: Your Honor, you missed P-82, which was
18 a second copy of the October 7th document.

19 THE COURT: Yeah, I didn t have that on my master
20 list. P-82 is the second copy of what, again?

21 MR. HARVEY: It s actually just the second copy of
22 P-81 with some handwriting on it.

23 THE COURT: All right. So with the addition of
24 P-82, the other named exhibits will be admitted without
25 objection now, and not the articles, and I did not name the

1 article exhibit numbers, there s no need to do that at this
2 point.

3 All right, Mr. Gillen what s your argument then on
4 P-145?

5 MR. GILLEN: On the news clips, simply, I don t
6 think there s any limitation on my ability to raise the
7 authenticity objection. I mean, it is a tape. I don t know
8 if it s a complete tape. Mr. Buckingham says that he did
9 talk to the reporter, but it s -- it s obviously edited and
10 cut. All of his comments are not on it, and therefore it s
11 a hearsay statement, it s out of court, the filming is, and
12 it s incomplete, so we object to it.

13 THE COURT: Well, your -- let me ask you this. You
14 had the ability, or have had the ability to get the whole
15 tape, is that correct?

16 MR. GILLEN: Conceivably, Your Honor, although our
17 efforts to get the materials from the reporters, you know,
18 met with little success. So --

19 THE COURT: Well, I think this is a little
20 different. You know, the materials you wanted from the
21 reporters were notes and e-mail transmissions. This is
22 something that was broadcast over the air. And if stations
23 have this material, they typically give it to you. I mean,
24 it s the same as getting a news article, as far as I m
25 concerned.

1 MR. GILLEN: It s -- it s incomplete, though. His
2 voice has been cut off. They only selected -- there s the
3 same editing -- it s evident from looking at it that
4 there s -- he s speaking and they re not giving him the
5 sound, so you don t know everything he said.

6 This whole point is that --

7 THE COURT: Are you saying the comment was taken
8 out of context?

9 MR. GILLEN: Yes.

10 MR. HARVEY: Your Honor, to be clear, the entire
11 portion that was on the news was not played in evidence
12 here. We just played a portion of it. And that entire
13 portion is in the exhibit, if they want to look at it. And
14 furthermore, he testified at his deposition that that was
15 everything he said. And they had an opportunity to ask him
16 if he said anything else that wasn t played, and they
17 didn t.

18 THE COURT: See, I don t think there s any
19 authenticity argument that you can make, unless you try to
20 tell me that the pixels were scrambled and it s not a fair
21 depiction of Mr. Buckingham.

22 MR. GILLEN: No.

23 THE COURT: I know you re not. And he admitted --
24 I heard nary a peep from Mr. Buckingham yesterday as far as
25 whether or not that was --

1 MR. GILLEN: Not at all, you re quite right, Your
2 Honor.

3 THE COURT: -- Mr. Buckingham on the video, and nor
4 did I hear him controvert it, and in fact he admitted that
5 he said it.

6 So, you know, under the circumstances, this is a
7 bench trial. You ll have to give me something better to not
8 have that admitted. I mean, he attempted during his
9 testimony to explain, of course, why he said it, but he
10 didn t deny that he said it. And I m wondering why we
11 shouldn t let it in on that basis.

12 MR. GILLEN: Well, I mean, his point was he was
13 ambushed. And if you look at the clip, the sound is
14 suppressed from his voice. He s speaking but you can t hear
15 what he s saying. That was his whole --

16 THE COURT: Well, the purpose of the tape in the
17 context of the presentation made was that he referenced the
18 word creationism, we all know that; he said that. He
19 admitted that he said that. You know, whatever else he said
20 is not particularly helpful -- or not helpful to me, unless
21 you re telling me that if there was an expanded version of
22 the tape that, as Mr. Harvey said, exists, that he said some
23 qualifying statement that was omitted; and if he did, you re
24 certainly free to provide that to me. But I didn t hear
25 that.

1 MR. GILLEN: No, no, not at all. My objection is
2 to point to the lack of completeness, because he s talking
3 on the tape. His statements yesterday are to the effect
4 that I did say that, but that s not what I meant, that s not
5 all I said. And so -- and what I m trying to get at is the
6 tape shows him talking but you re not getting the sound of
7 his voice.

8 THE COURT: I guess I m confused by what that
9 means. What do you mean, you re not getting the sound of
10 his voice?

11 MR. GILLEN: If your look at the clip, his --

12 THE COURT: You mean there s a cutaway?

13 MR. GILLEN: Yes, there s a cutaway.

14 THE COURT: Well --

15 MR. GILLEN: There s a cutaway where the narrator
16 narrates while Mr. Buckingham is still talking. What he was
17 trying to get at is that s not all I said.

18 THE COURT: Well, I accept that. I understand
19 that. And I guess the remedy for that is, if there was
20 something that was not presented, that s preserved, and you
21 want to show that to the Court, I ll not prevent you from
22 doing that, to take the statement in context. But I think
23 this, a common sensible approach is that he said that the --
24 the portion presented was precisely what he said; that was
25 what his testimony was, and then he explained why he said

1 it. And, you know, I take it as that. And I think we re
2 splitting hairs, you know, under the rather liberal, as you
3 know, Federal Rules of Evidence, particularly as it goes to
4 these types of presentations. I just can t -- unless you
5 have a technical argument, and I know you don t, as to the
6 fact that it was doctored or it doesn t represent his voice
7 or his picture or something like that. And it sounds absurd
8 when I say that, but if you had that argument, I would hear
9 it.

10 But not once did I hear him say that that excerpted
11 portion wasn t precisely what he said. Now, to be sure, he
12 may have said more. But he had the opportunity, and you had
13 the opportunity during your examination to elicit from him
14 what more he said, to the extent that he recalls it.

15 MR. GILLEN: No, squarely it was taken out of
16 context as he recalls. That s the nature of his objection
17 to the clip.

18 THE COURT: Well, I don t know that he said -- I
19 didn t take his testimony to say that it was taken out of
20 context, necessarily; I hear you saying that now. I took
21 his testimony to say I said it, but the word I think he used
22 was that I ambushed and I misspoke. I think that s
23 something different than taken out of context. But it may
24 be a distinction without a difference, I m not sure, but I m
25 inclined to admit 145, just to cut to the chase. And, you

1 know, subject to your objection, and I understand your
2 objection, so we ll admit 145.

3 I think that covers then Mr. Buckingham and
4 Dr. Nilsen, save for the articles, and we ll, as we said,
5 reserve argument on that.

6 Have we missed any exhibits up to this point, other
7 than the articles, for any other witnesses?

8 MR. HARVEY: We also have the four compilations of
9 letters and editorials, but I assume that you --

10 THE COURT: Yeah, and I note that I just received a
11 written memorandum from the plaintiffs on that point. And
12 you probably haven t even had an opportunity to read it yet.

13 MR. GILLEN: No.

14 THE COURT: And I think that s why we need to
15 reserve this for next week. And certainly you should feel
16 free if you want to, although you re not required to, if you
17 want to submit something in writing, an argument on that
18 Mr. Gillen or Mr. White, you re free to do that after you ve
19 had the opportunity to look at, having spent the week in
20 trial I m sure you ll want to spend the weekend looking at
21 the plaintiffs submission --

22 MR. GILLEN: Oh, joy.

23 THE COURT: -- trying to craft an appropriate
24 response.

25 All right. Are you prepared to present then your

1 first witness?

2 MR. GILLEN: Yes, Your Honor. The defense would
3 call Heather Geesey.

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

8 THE DEPUTY CLERK: State your name and spell your
9 last name for the record.

10 THE WITNESS: Heather Geesey, H-E-A-T-H-E-R,
11 G-E-E-S-E-Y.

12 DIRECT EXAMINATION

13 BY MR. GILLEN:

14 Q Good afternoon, Ms. Geesey. How are you?

15 A Nervous.

16 Q I understand. Well, let s discuss a few
17 preliminary matters to try and make you less nervous.

18 Are you employed?

19 A Yes.

20 Q Are you married?

21 A Yes.

22 Q What s your job?

23 A Full-time mommy.

24 Q So you have children?

25 A Yes.

1 Q How many?

2 A Three.

3 Q And what grades are they in?

4 A Eighth, third and kindergarten.

5 Q Do they attend Dover Area schools?

6 A Yes.

7 Q And am I right in understanding that you re a
8 school board member?

9 A Yes.

10 Q When did you join the board?

11 A I was elected in November of 03.

12 Q You say you were elected. When did you run?

13 A I first started December of 03.

14 Q Okay. Did you have a platform when you ran?

15 A Yes.

16 Q What was that?

17 A That I was an elementary mother.

18 Q What did you mean by that?

19 A That I was -- I knew their concerns, I was the only
20 one at the time with young children.

21 Q Were you endorsed by anyone when you ran for
22 office?

23 A Yes.

24 Q Who was that?

25 A Jeff Brown.

1 Q You say you were elected in November 2003. When
2 did you actually join the board as a working member?

3 A December of 03.

4 Q So what was your first full year of work on the
5 board?

6 A 2004.

7 Q Do you have --

8 A Did I miss the question?

9 Q Don t be nervous, it s really just your chance to
10 tell your part of the story here.

11 A Okay.

12 Q Does the board have a policy for training new
13 members?

14 A No.

15 Q Did you have a mentor for your first year?

16 A Yes.

17 Q Who was that?

18 A Casey Brown.

19 Q How was your relationship with Mrs. Brown?

20 A Difficult.

21 Q And why was that?

22 A She had strong opinions, and if you disagreed with
23 her, it was just her way or no way.

24 Q And did you disagree with her at times?

25 A Yes.

1 Q And what was the result?

2 A She ignored me, didn't return my calls, didn't give
3 me advice.

4 Q Can you give a specific example of a disagreement?

5 A Yes.

6 Q Please do so.

7 A Once, as President Allen asked before the summer if
8 we could only have one board meeting instead of two. And I
9 agreed with him and I voted yes, and she was mad and she
10 stormed out.

11 Q And what was your relationship with Mrs. Brown like
12 after that?

13 A Not good.

14 Q And how did you know that?

15 A She wouldn't return my phone calls.

16 Q Did she advise you as a mentor after that time?

17 A No.

18 Q Were you on any committees in 2004?

19 A Yes.

20 Q Which ones?

21 A Policy and LIU.

22 Q How did you get on these committees?

23 A I was appointed. I believe I just filled in for
24 Mrs. Callahan.

25 Q You referenced filling in for Mrs. Callahan. Did

1 you replace her on the board?

2 A Yes.

3 Q Did you ever speak with Mrs. Callahan about that?

4 A Yes.

5 Q Based on that conversation, did you have an
6 understanding concerning her assessment of your character?

7 A I understood it to be that she thought I was
8 dishonest.

9 Q And why was that?

10 A Because I said I was running by myself, and I was
11 endorsed by Jeff Brown.

12 Q Did you have a conversation with Mr. Brown about
13 why he endorsed you?

14 A Yes.

15 Q What was your understanding of Mr. Brown s purpose
16 in endorsing you?

17 A I -- it was my understanding that he did not want
18 Mrs. Callahan back on the board.

19 Q You referenced a conversation with Mrs. Callahan.
20 What was the tone of that conversation?

21 A It was rude.

22 Q Well, later on as you were serving as a school
23 board member, were there occasions when Mrs. Callahan
24 addressed the board?

25 A Yes.

1 Q And what were your thoughts in the matter when she
2 addressed the board?

3 A Starting trouble.

4 Q Well, let me ask you this. You mentioned some
5 committees you were on in your first year. You mentioned
6 the policy committee. What is the purpose of the policy
7 committee?

8 A To set the policies for the school district.

9 Q Did you work on policies during the 2004 school
10 year?

11 A Yes.

12 Q Give us some examples.

13 A Dress code, cellphone, Internet usage.

14 Q Does the policy committee deal with curriculum?

15 A No.

16 Q Were you appointed to the board curriculum
17 committee during 2004?

18 A No.

19 Q You ve referenced LIU, what is that?

20 A It s Lincoln Intermediate Unit, it s the special
21 education.

22 Q Did you do any work in that committee in 2004?

23 A No, we shared a seat with another school district
24 and it was their turn.

25 Q All right. Since 2004 was your first year, let s

1 take a look at that year as it unfolds from your perspective
2 and as it relates to the issues in this case.

3 If we take the first part of the year from January
4 through, say, the end of May, did any issues relating to the
5 biology text or biology curriculum come to your attention
6 during that period?

7 A No.

8 Q Let s look at June. Do you remember the biology
9 text being discussed at board meetings during the June
10 period?

11 A Yes.

12 Q Do you have a specific recollection of two meetings
13 in June or one?

14 A They all run together to me. They re all blurry.

15 Q Okay. Well, let me ask you this. Do you remember
16 discussion of the biology text and other theories in the
17 June meetings?

18 A Yes.

19 Q Tell us what you can recall.

20 A I remember Mrs. Callahan coming up and saying that
21 students need their books.

22 Q And did that observation on her part illicit a
23 response from anyone on the board?

24 A Yes. Yes.

25 Q Tell us what you recall about that.

1 A Mr. Buckingham and Mrs. Callahan then were arguing.

2 Q Do you recall any specifics of their arguments?

3 A No.

4 Q Well, when Mrs. Callahan came up and said students
5 needed books, what was your reaction?

6 A It wasn't true, I knew that they had books.

7 Q Do you remember anything else about the exchanges
8 with Mrs. Callahan and Mr. Buckingham?

9 A No.

10 Q Do you remember them arguing?

11 A Yes.

12 Q Did you pay attention to the exchanges?

13 A No.

14 Q And why not?

15 A I was reading, I was preparing to move onto the
16 next motion.

17 Q Do you remember the term "creationism" being used
18 during these June meetings by board members?

19 A No.

20 Q How about, do you remember the term "creationism"
21 being used by members of the public during these June board
22 meetings?

23 A Yes.

24 Q Do you remember anything specific?

25 A I know the teachers brought it up. I know

1 Mrs. Buckingham brought it up.

2 Q Okay. Well, we re going to talk a little about
3 that. Let me ask you though first, did you read the daily
4 papers during this period of 2004?

5 A No.

6 Q Do you get them?

7 A No.

8 Q Do you get any paper?

9 A The Sunday, I buy the Sunday paper.

10 Q And do you read that?

11 A Yes.

12 Q Do you remember any discussion of reporting among
13 board members during this June period?

14 A Yes, I remember board members discussing that the
15 newspapers were inaccurate and they couldn t believe how
16 inaccurate they were.

17 Q Do you remember any specific observations?

18 A No.

19 Q You ve mentioned Charlotte Buckingham. Do you
20 understand that she s related to Bill Buckingham?

21 A Yes.

22 Q You remember her speaking at a board meeting?

23 A Yes.

24 Q Tell us what you remember Mrs. Buckingham saying.

25 A She was talking about creationism, Genesis 1 of the

1 Bible.

2 Q And what was your reaction when Mrs. Buckingham
3 made those statements?

4 A I tuned her out because I didn't see the point. We
5 weren't -- we weren't discussing that so I started reading
6 and. . .

7 Q When she mentioned creationism, what is creationism
8 to you?

9 A Genesis 1.

10 Q And at any time during your tenure as a school
11 board member did you understand the purpose of the board to
12 provide for the teaching of creationism?

13 A No.

14 Q If we look at this period here in the summer of
15 2004, did you believe that intelligent design was
16 creationism?

17 A No.

18 Q Why not?

19 A Because when you talk about intelligent design they
20 don't bring up the Bible.

21 Q Did you have any other information you were relying
22 on during this period?

23 A Yes.

24 Q What was that?

25 A Bill and Allen, they said it was a scientific

1 theory.

2 Q Did you have an understanding based on what they
3 said about whether scientists supported it?

4 A Yes, that s what they said, other scientists -- a
5 lot of other scientists believed this.

6 Q Did you yourself ever do any research on
7 intelligent design?

8 A No.

9 Q Why not?

10 A It wasn t my committee; wasn t my job.

11 Q Well, what do you mean by that? How does the board
12 operate, from your perspective?

13 A Everybody is assigned to committees. It s their
14 responsibility to do the work and then bring it back to the
15 full board; and that wasn t my committee.

16 Q Do you rely on other committee members?

17 A Yes.

18 Q Okay. Now, Heather, a letter that you directed to
19 the editor of a newspaper has been raised in this
20 litigation, so I m going to ask you a few questions about
21 that.

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

23 THE COURT: You may.

24 MR. GILLEN: Thank you.

25

1 BY MR. GILLEN:

2 Q Heather, I ve just handed you two documents that
3 have been marked plaintiffs exhibit 56 and plaintiffs
4 exhibit 60. I d ask you to direct your attention to
5 plaintiff s exhibit 56. Do you have it?

6 A Yes.

7 Q Do you recognize that document?

8 A Yes.

9 Q What is it?

10 A It s a letter to the editor from Beth Eveland.

11 Q And editor of what paper?

12 A York Sunday News.

13 Q And what is the date?

14 A June 20th.

15 Q Did you read this letter?

16 A Yes.

17 Q Did you do anything as a result of reading the
18 letter?

19 A Yes, I did.

20 Q What did you do?

21 A I wrote a letter -- a letter to the editor as well.

22 Q With that in mind, I d ask you to look at
23 plaintiffs exhibit 60. Do you have it?

24 A Yes.

25 Q Do you recognize that document?

1 A Yes.

2 Q What is it?

3 A It s my letter to the editor.

4 Q Editor of what paper?

5 A York Sunday News.

6 Q And what is the date?

7 A June 27th.

8 Q I know that you wrote this letter now, but before
9 we begin talking about it let me ask you this. When you
10 wrote this letter, did you have an understanding concerning
11 whether you were speaking for the Dover Area School Board?

12 A Yes.

13 Q What was that understanding?

14 A That I was not speaking for the Dover Area School
15 Board.

16 Q And why do you say that? How does the board speak?

17 A We didn t vote on it. They speak through votes,
18 resolutions, and we did not do any of that official stuff.

19 Q But look at how you signed the letter. Read how
20 you signed it for the record.

21 A "Dover Area School Board director."

22 Q And why did you sign it that way?

23 A Because I wanted it printed.

24 Q And was it printed?

25 A Yes.

1 Q Let me ask you, why did you write this letter?

2 A She was attacking Bill, attacking the board, saying
3 we were going against our mission statement; and I knew we
4 were not.

5 Q Okay. And what do you mean by "we"?

6 A The board.

7 Q And against the mission statement, explain a little
8 more what you mean by that. Well --

9 A She was saying that we were doing -- going against
10 our mission statement. And I knew we were not doing that.

11 Q All right. Well, let s take a look at it this way.
12 If you would, I would ask you to look at the first paragraph
13 of Ms. Eveland s letter and read that for the record.

14 A Okay. "As a parent in the Dover Area School
15 District I must convey my shock and utter dismay at William
16 Buckingham s comments regarding the search for a new biology
17 textbook for the high school. I am especially upset with
18 Mr. Buckingham s comments as quoted in Wednesday s York
19 Daily Record. This country wasn t founded on Muslim
20 beliefs or evolution. This country was founded on
21 Christianity and our students should be taught at such. "

22 Q There s a statement there that s been attributed to
23 Mr. Buckingham. Do you remember Mr. Buckingham making that
24 statement?

25 A No.

1 Q Why did you respond to this letter?

2 A She was saying how Bill was making these outrageous
3 statements, and I was just telling her that it wasn't so
4 outrageous.

5 Q Did you see -- I'm sorry. Did you see the letter
6 as an attack on you as well?

7 A Yes.

8 Q Okay. Let me ask you this. Was there a specific
9 portion of your letter designed to respond to the part of
10 Mrs. Eveland's letter that you just read for the record?

11 A Yes.

12 Q If you would, please read the portion of your
13 letter to which you're referring, for the record.

14 A "This letter is in regard to the comments made by
15 Beth Eveland from York Township in the June 20th, York
16 Sunday News. I assure you that the Dover Area School Board
17 is not going against its mission statement. In fact, if you
18 read the statement, it says, To educate our students so
19 that they can be contributing members of society. I do not
20 believe in teaching revisionist history. Our country was
21 founded on Christian beliefs and principles. We are not
22 looking for a book that is teaching students that this is a
23 wrong thing or a right thing, it is just the facts."

24 Q So Heather, what was your point in writing that
25 text?

1 A Again, she was attacking Bill saying he was
2 outrageous, and I was just showing her that it wasn't that
3 outrageous because our country did have a lot of Christian
4 influences.

5 Q Well, what is this part here about revisionist
6 history; what's your point there?

7 A That that's not what we were doing. We weren't
8 looking for a history book; that's beside the point.

9 Q Were you trying to say anything else in the
10 paragraph you've just read?

11 A No.

12 Q Now, let me ask you to direct your attention to the
13 second paragraph of Ms. Eveland's letter, and if you would
14 read that for the record.

15 A "This statement is in direct contradiction to the
16 mission statement for Dover schools. In partnership with
17 family and community, to educate students, we emphasize
18 sound basic skills and nurture the diverse needs of our
19 students as they strive to become lifelong learners and
20 contributing members of our global society. What a slap in
21 the face to many of the parents and taxpayers of the Dover
22 area. How sad that a member of our own school board would
23 be so closed minded and not want to carry on the mission of
24 Dover schools. His ignorance will not only hold back
25 children attending Dover Area schools, but also reinforce

1 other communities views that Dover is a backwards,
2 closed-minded community."

3 Q Was there a specific portion of your letter
4 designed to respond to the portion of Mrs. Eveland s letter
5 which you just read?

6 A Yes.

7 Q If you would please read the portion of your letter
8 to which you re referring, for the record.

9 A "All we are trying to accomplish with this task is
10 to choose a biology book that teaches the most prevalent
11 theories. The definition of theory is merely a speculative
12 or an ideal circumstance. To present only one theory or to
13 give one option would be directly contradicting our mission
14 statement."

15 Q Okay. What was your point in writing that text?

16 A I was just telling her what we are doing, we are
17 choosing a biology book that teaches the most prevalent
18 theories.

19 Q Now, this letter is dated June 27, 2004. Do you
20 remember discussions of other theories at the board meetings
21 in June?

22 A Yes.

23 Q What theory do you remember?

24 A Intelligent design.

25 Q Did you believe that intelligent design was a

1 scientific theory?

2 A Yes.

3 Q How did you know that? How did you come by that
4 belief?

5 A Bill and Allen.

6 Q When you wrote this portion of the text here that
7 deals with "to present only one theory would be directly
8 contradicting our mission statement," what was your point
9 there?

10 A Our mission statement is to educate our students.
11 And I thought by giving them more than one theory, that that
12 was making them aware; so that, to me, was educating them.
13 If we didn't do that, then we would be contradicting
14 ourselves.

15 Q Does that kind of sum up the point of that
16 paragraph of your letter?

17 A Yes.

18 Q Let's look at the last paragraph of Ms. Eveland's
19 letter and I'd ask you to read that for the record.

20 A "If this was simply a matter of selecting a text
21 that gives two contradicting scientific theories equal time,
22 that would be an entirely different matter. But it's not.
23 Creationism is religion, plain and simple. Mr. Buckingham's
24 comments offend me not because they are religious in nature,
25 but because it is my duty to teach my children about

1 religion as I see fit, not the Dover Area School District
2 during a biology class."

3 Q Now, when you read this paragraph of this letter,
4 did you believe that the board was contemplating teaching
5 creationism?

6 A No.

7 Q When you read this paragraph of this letter did you
8 believe that the board was contemplating teaching religion?

9 A No.

10 Q Was there a portion of your letter that was
11 designed to respond to the claim that you were -- the board
12 was contemplating teaching creationism or religion?

13 A Yes.

14 Q Which part was that?

15 A In the third paragraph where I tell her what we
16 were doing, that we were choosing a biology book that
17 teaches the most prevalent theories.

18 Q Was there any other part of your letter that was
19 designed to respond to this last paragraph of Ms. Eveland's
20 letter?

21 A Yes.

22 Q I would ask you to read the part to which you re
23 referring for the record.

24 A "You can teach creationism without it being
25 Christianity. It can be presented as a higher power. That

1 is where another part of Dover s mission statement comes
2 into play. That part would be In partnership with family
3 and community. You, as a parent, can teach your child your
4 family s ideology."

5 Q This was written on -- your letter that is, was
6 written on June 27th, 2004. Do you remember any other
7 developments in June relating to the biology text?

8 A (No response.)

9 Q How about July? Do you remember any developments
10 in July relating to the *Biology* text?

11 A They were able to get a newer version of the book
12 for the same price. I believe that was July.

13 Q Do you remember the board -- the *Biology* text
14 recommended by the science teachers was approved in July?

15 A No.

16 Q Well, let s look at August. Do you remember any
17 board meetings in August of 2004?

18 A Yes.

19 Q Do you remember the *Biology* text coming up on the
20 agenda at that time?

21 A Yes.

22 Q Well, do you remember the text *Of Pandas* coming up
23 in connection with the board meeting in August?

24 A Yes.

25 Q Tell us what you remember about *Of Pandas*?

1 A That it was not on the agenda, and Bill was upset
2 that it wasn't there.

3 Q Did he say why?

4 A He just wanted both books together.

5 Q When you say he wanted both books together, how
6 were the books on the agenda? Do you remember what the
7 issue was relating to the *Biology* text?

8 A He wanted them to balance each other out. He
9 just -- he wanted them together.

10 Q Do you -- did you vote to approve the *Biology* text
11 recommended by the science faculty at the August 2004 board
12 meeting?

13 A No.

14 Q Why not?

15 A There were still unresolved issues.

16 Q And what do you mean by that?

17 A Well, Bill was unhappy because of the *Panda* book.
18 The teachers were unhappy. And this was my first book
19 purchase and, to me, that was a lot of money; now I know
20 better.

21 Q Well, when you voted not to approve the *Biology*
22 text recommended by the science faculty for purchase in
23 August of 2004, was it your intent not to approve that text
24 at any time?

25 A No.

1 Q What was your purpose?

2 A Just to hold it up for a while to get the issues
3 resolved.

4 Q Do you remember anything else that happened in
5 connection with the voting on approval of the *Biology* text
6 recommended by the science faculty at that meeting?

7 A In August?

8 Q Yes. How about other board members, do you
9 remember their reaction or voting?

10 A Yes. Jeff Brown was upset, and Angie changed her
11 mind, and that s how it got approved.

12 Q Okay. When you say it got approved, what do you
13 mean?

14 A The textbook.

15 Q Okay. And when you say text, what text are you
16 referring to?

17 A The *Biology* book.

18 Q And is that the Miller and Levine 2004 edition?

19 A Yes.

20 Q Now, this meeting we re talking about now is in
21 early August, it s actually August 2nd, 2004. Let me ask
22 you, from that date, August 2th, 2004, through October,
23 were you personally involved in any developments that
24 related to the *Biology* text or biology curriculum?

25 A No.

1 Q Did there come a time when issues relating to the
2 biology curriculum came to your attention as a board member?

3 A October.

4 Q Okay. And can you be more specific?

5 A When it came time to vote.

6 Q Okay. And are you referring to the October 18,
7 2004 board meeting?

8 A Yes.

9 Q Let s look at what you recall about that board
10 meeting. Starting with the public comment, can you tell us
11 anything you remember from that meeting?

12 A Bert Spahr came up to the podium, Jenn Miller --

13 Q Do you remember anything that either of them said?

14 A Bert Spahr was afraid that we were going to make
15 her teach religion. She wasn t happy with intelligent
16 design. She -- there was a lot.

17 Q How about the role of the teachers in the process,
18 did she address that?

19 A Right, right. Yes, she said they weren t a part of
20 the process, right.

21 Q And as you sat there as a board member, what was
22 your reaction to her statement?

23 A I didn t believe her because I knew that they were
24 a part of the process, and that -- I knew intelligent design
25 wasn t creationism, and I knew we weren t making them teach

1 that. So I -- I didn't --

2 Q Let's look at that piece by piece. You say you
3 knew teachers were part of the process. How did you come to
4 understand that teachers had been involved, if you yourself
5 weren't involved?

6 A I was told that they were.

7 Q Who gave you that information?

8 A Administration.

9 Q How about the notion that intelligent design was
10 not religion, how did you come by that understanding?

11 A I knew that it wasn't. Bill and Allen would have
12 told me. You know, that was their committee, they would
13 have come back and said that it wasn't.

14 Q How about the threat of liability; how did you come
15 to know teachers had that concern?

16 A Bert Spahr had said.

17 Q Do you remember anything that Jenn Miller said?

18 A No, but I knew she was in agreement.

19 Q Do you remember anything else that was said by way
20 of public comment at the outset of the meeting?

21 A After the vote there was something that I do --

22 Q Okay. Well, let's take it piece by piece for the
23 sake of making a logical story.

24 Is that all you remember about public comment at
25 the beginning of the meeting?

1 A At the beginning, yes.

2 Q Okay. What s the next thing you remember about the
3 meeting that bears on this biology curriculum issue?

4 A Taking the vote and Noll changing it about a dozen
5 times.

6 Q Say that again.

7 A We took the vote, and Noll changed it about a dozen
8 times.

9 Q Did you have a sense for the purpose of Noll s
10 parliamentary maneuvers?

11 A That he didn t want it to pass.

12 Q And what was your reaction to that?

13 A That surprised me because I thought he was for
14 intelligent design.

15 Q Do you remember any motions being made by
16 Mr. Bonsell?

17 A Yes.

18 Q Tell us what you remember about that.

19 A He took the one part from the teachers proposal,
20 the origins of life will not be taught, and he added it to
21 what the board had come up with, and combined it.

22 Q And is that the final version that was approved by
23 the board?

24 A Yes.

25 Q Did you understand or have an understanding

1 concerning Mr. Bonsell s purpose in offering that amendment?

2 A Yes, that --

3 Q What was that?

4 A So they wouldn t be sued, that s why he added that.

5 Q Did you vote to support the amended curriculum
6 change proposed by Mr. Bonsell?

7 A Yes.

8 Q And why did you do that?

9 A I agreed with it. It goes with our mission
10 statement to educate the students, it made them aware of
11 something else.

12 Q When you voted for the proposed curriculum change,
13 did you do so because you believed that you would be
14 teaching religion?

15 A No.

16 Q Is there anything else that happened at this
17 meeting that affected you personally?

18 A Yes.

19 Q That s come up before also, so tell us about that
20 from your perspective.

21 A I was misquoted.

22 Q Okay. Give us the background for the misquoting
23 you re referencing.

24 A I had said they should be fired, and everyone
25 misunderstood. Jeff Brown was saying, if "they," meaning

1 the teachers, are sued, then "they" should be able to use
2 our lawyers. So then I had said well, if "they" are sued,
3 meaning the teachers, then "they" should be fired, meaning
4 the solicitors, because they had told us, the solicitors had
5 told us what we were doing was okay.

6 Q Let s not get too much into that because I don t
7 want to get bogged down in claims that might be privileged.
8 But was your statement misunderstood?

9 A Yes.

10 Q How did that come to the attention of -- your
11 attention?

12 A The next morning people were telling me, did you
13 see the paper. It was just a frenzy with, you know, my
14 friends.

15 Q And did you look at the article they were
16 referencing as a result of these calls?

17 A Yes, I did.

18 Q And what did you see?

19 A I saw it said that they should be fired, and in
20 like brackets, he wrote, the faculty; he added to my quote.

21 Q So when you read the quote in the paper, what was
22 its thrust?

23 A Excuse me?

24 Q When you read the quote in the paper, what was its
25 thrust?

1 A That meaning I said they should fire the teachers.

2 Q And is that what you had said or meant, at least?

3 A No.

4 Q Okay. Did you look at who wrote the article you re
5 referencing?

6 A Yes.

7 Q And who was that?

8 A Joe Maldonado.

9 Q Did you do anything as a result of this article?

10 A Yes.

11 Q Tell us what you did.

12 A I called Dr. Nilsen and asked him to send an e-mail
13 to the teachers from me saying I didn t say it. I asked him
14 for a transcript of the meeting to prove that I didn t say
15 it.

16 Q Did you do anything with respect to the author of
17 the article?

18 A Yes.

19 Q What did you do?

20 A I did speak with Joe. And I told him I did not say
21 that, and he knew -- knows I didn t say that.

22 Q And did you have any sense for whether
23 Mr. Maldonado was concerned by the inaccuracy of the
24 reporting?

25 A He did not care. And I got the sense that he knew,

1 but he didn't care.

2 Q There's a few other, what should I say, high points
3 in this controversy here, and I just want to see whether you
4 have anything to do with those for the record.

5 There was a press release that was put out by the
6 district on November 19th, 2004. Did you have any
7 significant role in drafting that press release?

8 A No.

9 Q How about the donation of the books *Of Pandas*, did
10 you have any knowledge about that?

11 A No.

12 Q There was a newsletter that was subsequently put
13 out that related to this controversy, did you have any role
14 in formulating that newsletter?

15 A Nothing meaningful, no.

16 Q And there were some books that were donated by
17 another group, Debunk Creation. Did you have any role in
18 reviewing those books?

19 A No.

20 Q When we started here you indicated that your kids
21 attend schools in Dover.

22 A Yes.

23 Q And why do you send your children to the schools in
24 Dover Area School District?

25 A When it was time to send my oldest to school, I

1 checked into a private Christian school, and at the time
2 they still were not teaching everything. They still had a
3 narrow-minded view, and I wanted to give them more exposure
4 to other things.

5 Q Is evolutionary theory among the things you want
6 your kids to be exposed to?

7 A Yes.

8 MR. GILLEN: I have no further questions, Your
9 Honor.

10 THE COURT: Thank you, Mr. Gillen.

11 Who will conduct cross examination. Mr. Walczak?

12 CROSS EXAMINATION

13 BY MR. WALCZAK:

14 Q Good afternoon, Mrs. Geesey.

15 A Hello.

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

17 THE COURT: You may.

18 BY MR. WALCZAK:

19 Q Mrs. Geesey, I ve just handed you a copy of your
20 deposition transcript from I believe it was March the 10th.

21 A Yes.

22 Q And you recall that deposition?

23 A Yes.

24 Q I just handed it to you now because we might be
25 referring to it.

1 I m not sure I heard the last point you made. You
2 say you did not want your children being exposed to
3 evolution?

4 A No, I do.

5 Q You do want them?

6 A Um-hum.

7 Q And what was it about the Christian school that you
8 didn t like as much as you like about the Dover schools?

9 A At the time that -- he s in eighth grade now, so
10 when he was going to kindergarten they did not teach
11 everything, they didn t teach different views.

12 Q What do you mean "everything" and "different
13 views"?

14 A They didn t teach evolution, you know, it was
15 Christian, they just taught one thing.

16 Q What was the one thing they taught?

17 A Genesis, you know, Genesis.

18 Q And you don t have a background in science, do you?

19 A No.

20 Q And your educational background involves finishing
21 high school?

22 A Yes.

23 Q And you haven t had any science courses since then?

24 A No.

25 Q You attended all of the board meetings in March --

1 I m sorry, in 2004 except one?

2 A I believe it was two; I was certain of one.

3 Q And you were not on the curriculum committee in
4 2004?

5 A No.

6 Q And you weren t involved in curriculum committee
7 discussions?

8 A No.

9 Q So you wouldn t have been involved in any of the
10 curriculum committee discussions about the Miller and Levine
11 textbook?

12 A No.

13 Q And you weren t involved in the committee
14 discussions about *Pandas*?

15 A No.

16 Q And you weren t involved in the committee
17 discussions about changing the curriculum to include
18 intelligent design?

19 A No.

20 Q Now, in the summer of 2004, you didn t do anything
21 to learn more about the Miller and Levine textbook, did you?

22 A No.

23 Q And you didn t take any steps to learn more about
24 the whole concept of intelligent design?

25 A No.

1 Q Now, you testified earlier that intelligent design
2 was discussed by the board in June.

3 A Yes.

4 Q And you re saying that that was a theory that was
5 identified at a board meeting?

6 A Yes.

7 Q And that was identified by whom?

8 A It would have been Allen or Bill.

9 Q So you re saying that they raised -- they actually
10 said intelligent design at a board meeting in June?

11 A I believe so, yes.

12 Q And you re saying that they said that, that
13 intelligent design would be a good alternative theory to
14 teach along with evolution?

15 A Yes.

16 Q So they specifically identified the theory that
17 would be taught to balance evolution?

18 A Yes.

19 Q If you could turn to page 31 of your transcript
20 there, please. Do you have that, Ms. Geesey?

21 A Yes.

22 Q And actually if you go back to the 30th, page 30,
23 they re talking about the June 7th --

24 A Okay.

25 Q -- meeting there.

1 Then beginning on page seven you were asked -- I
2 believe Mr. Schmidt handled your deposition, is that
3 correct?

4 A Yes.

5 Q And starting on line seven of page 31 -- actually
6 let me go back. Ms. Schmidt asked you, "Do you recall him
7 saying that the textbook that was under consideration was
8 laced with Darwinism?" And you replied "No." Correct?

9 A Correct.

10 Q And as you sit here today do you remember
11 Mr. Buckingham saying that the Miller and Levine textbook, I
12 guess it was the 2002 then, was laced Darwinism?

13 A Yes.

14 Q Do you remember him saying that?

15 A Yes.

16 Q And --

17 A Wait a minute, wait, wait, no, laced with Darwin --
18 no, no. I was jumping ahead. But laced with Darwinism, no.

19 Q Are you saying he didn't say it or you just don't
20 remember?

21 A I don't remember.

22 Q And then it goes on and says, "What did he say he
23 wanted to balance Darwinism with at that meeting?" And then
24 your answer on line nine is, "At that meeting I don't know.
25 He wanted another theory at that time. At that time I don't

1 think he knew."

2 "Question. Did he say any theory would do, it just
3 has to be another one or something to that effect?

4 "Answer. No.

5 "Question. What did he say?

6 "Answer. Just another theory, another scientific
7 theory.

8 "Question. What was your understanding of what he
9 was talking about at that meeting at June 7?

10 "Answer. That they were going to continue looking
11 for another book until they found one that had more than one
12 theory.

13 "Question. What was your understanding of what the
14 candidates were for another theory?

15 "Answer. I didn't. It wasn't my -- that is not my
16 committee, so I didn't have to understand.

17 "Question. Did you ask any questions?

18 "No."

19 Was that your testimony in March of 2005, this
20 year?

21 A In March, yes, it was.

22 Q And you were under oath then?

23 A Yes.

24 Q And you swore to tell the truth?

25 A Yes.

1 Q And you did tell the truth?

2 A Yes.

3 Q So in March you didn't know what theory he wanted
4 to introduce to balance evolution, but today you do?

5 A I believe I was saying that I could not tell the
6 meetings apart. But in preparing, I read both articles that
7 I wrote, and mine is June 27th, and then I -- I must have
8 known, it must have come up because I wrote that. Then I
9 was telling -- that's what I had remembered.

10 Q So you didn't know in March what he was talking
11 about, but you know now what he was talking about?

12 A Because of reading the article, yes, I would have
13 had to.

14 Q Could you turn to page 49, please. Are you there?

15 A Yes.

16 Q Could you look at line 20. Do you see it?

17 A Yes.

18 Q Okay, the question there is, "Do you recall a
19 discussion by anyone or a statement by anyone at the
20 June 14th meeting involving the words intelligent design?

21 "Answer. No."

22 Did I read that correctly?

23 A Yes.

24 Q So in March you testified under oath again that you
25 did not recall any statement at the June 14th meeting

1 about intelligent design.

2 A Yes, because it says June 14th, and I -- meetings
3 run together.

4 Q So in March your testimony was that intelligent
5 design was not used at the June 7th meeting, and it was
6 also that intelligent design was not used at the June 14th
7 meeting. Were there any other meetings -- board meetings in
8 June?

9 A Not that I -- no, no.

10 Q Now, you said you voted for the October 18th
11 curriculum change because you liked it.

12 A Yes.

13 Q You supported the change.

14 A Yes.

15 Q It -- because it gave a balanced view of evolution.

16 A Yes, I mean . . .

17 Q It presented an alternative theory?

18 A Yes.

19 Q And the policy talks about gaps and problems with
20 evolution?

21 A Yes.

22 Q Yes. You don't know what those gaps and problems
23 refer to, do you?

24 A No.

25 Q But it's good to teach about those gaps and

1 problems?

2 A That -- yes, that s our mission statement, yes.

3 Q But you have no idea what they are?

4 A It s not my job, no.

5 Q Is it fair to say that you didn t know much about
6 intelligent design in October of 2004?

7 A Yes.

8 Q And you didn t know much about the book *Of Pandas*
9 *and People* either, did you?

10 A Correct.

11 Q So you had never participated in any discussions of
12 the book?

13 A No.

14 Q And you made no effort independently to find out
15 about the book?

16 A No.

17 Q And the administration had made copies of the book
18 available to board members.

19 A Yes.

20 Q But you never read the book.

21 A No.

22 Q And no one ever explained to you what intelligent
23 design was about.

24 A No.

25 Q And you never got any instructional materials or

1 tapes about intelligent design.

2 A No.

3 Q And you never viewed any or read any books about
4 intelligent design.

5 A No.

6 Q And you didn't study it independently.

7 A No.

8 Q You didn't go on the Internet and look it up.

9 A No.

10 Q So you didn't really think too much about
11 intelligent design.

12 A No.

13 Q You just knew it was something else that the kids
14 were going to learn?

15 A Yes.

16 Q And it was a theory that was different from
17 Darwin's view.

18 A Yes.

19 Q And what you testified earlier is that you were
20 relying on the recommendation of the curriculum committee.

21 A Yes.

22 Q And that was their job.

23 A Yes.

24 Q And because they were recommending the introduction
25 of intelligent design, you were going to go along with that.

1 A Yes.

2 Q And you thought it was a good idea to introduce an
3 alternative to evolution.

4 A Yes.

5 Q Now, it wasn't the entire curriculum committee that
6 was recommending this change, correct?

7 A I don't know.

8 Q Well, who was on the curriculum committee?

9 A Bill, Allen, and I can't remember the other one.

10 Q Was Sheila Harkins on it?

11 A I don't know.

12 Q Do you know if Sheila Harkins was supportive of
13 intelligent design?

14 A I don't know that. I don't know. I never really
15 thought about it.

16 Q So the two people you were really listening to and
17 talking to about this were Bill Buckingham and Allen
18 Bonsell.

19 A Yes.

20 Q And Casey Brown, I'll just tell you, Casey Brown
21 was the last member of the curriculum committee. Does that
22 sound right?

23 A Yes.

24 Q And she was not supportive of this change.

25 A No.

1 Q In fact, she was adamantly opposed to introducing
2 intelligent design into the curriculum.

3 A Yes.

4 Q But you weren't listening to her, were you?

5 A She wasn't -- she was ignoring me, she wasn't
6 mentoring me, so . . .

7 Q But she was there advocating against introduction
8 of intelligent design, so it wasn't like the curriculum
9 committee was unified?

10 A Right.

11 Q But you chose to listen to Mr. Buckingham and
12 Mr. Bonsell?

13 A Correct.

14 Q Now, I know you said you don't have any background
15 in science, correct?

16 A Correct.

17 Q And do you know whether Mr. Buckingham has a
18 background in science?

19 A No, I do not.

20 Q Do you know that in fact he doesn't have a
21 background in science?

22 A I don't know. He's law enforcement, so I would
23 assume he had to take something along the way.

24 Q Did he ever tell you he knew something about
25 biology?

1 A No.

2 Q How about Mr. Bonsell, do you know what his
3 background is?

4 A No.

5 Q Do you know what he does for a living?

6 A He s a business owner, I believe.

7 Q He s not a scientist, to your knowledge?

8 A Not to my knowledge, no.

9 Q He s not a science teacher?

10 A No.

11 Q Now, there are people employed by the school
12 district who do know a little something about science,
13 correct?

14 A Correct.

15 Q And that would be the teachers.

16 A Yes.

17 Q And you know Ms. Bertha Spahr?

18 A Yes.

19 Q And she s been with the school district a long
20 time.

21 A Yes.

22 Q And she s head of the science department.

23 A Yes.

24 Q And you know Ms. Miller.

25 A Yes.

1 Q And you know Mr. Eshbach.

2 A Yes.

3 Q And you know Mr. Lanker?

4 A I don t -- I wouldn t be able to place him, but I
5 know the name, I know he s a teacher.

6 Q And he s a science teacher?

7 A Yes.

8 Q And you knew that the science teachers were all
9 opposed to introducing intelligent design?

10 A Correct.

11 Q And the teachers had in fact told you that they
12 were concerned about introducing intelligent design because
13 they were worried that they would get sued.

14 A Correct.

15 Q And specifically they were worried about teaching
16 from the *Pandas* book, correct?

17 A I don t -- I don t know.

18 Q Do you recall in August of 2004 you had a
19 discussion about approving the new *Biology* book?

20 A Yes.

21 Q And at that time Mr. Buckingham did not want to
22 vote to approve the *Biology* book unless *Of Pandas and People*
23 was approved?

24 A Correct.

25 Q And do you recall Ms. Spahr making any comments

1 about *Of Pandas and People*?

2 A No. No.

3 Q Could you look at page 63 of your deposition,
4 please. Are you there?

5 A Yes.

6 Q Let me read to you starting on line seven, and this
7 is Mr. Schmidt asking a question.

8 "And I understand that the afraid of being sued
9 referred to something that she said about teaching religion
10 in the science curriculum.

11 "Answer" -- that s you -- "correct."

12 "Question. Can you tell me any more about your
13 understanding of what she meant when she said that?

14 "Answer. She thought we were going to make them
15 teach religion.

16 "Question. Again, what did you understand her to
17 be referring to when she said that?

18 "Answer. I don t know because we weren t, we
19 weren t doing that, so to me it was an unfounded statement.

20 "Question. What do you think she was referring to?

21 "Answer. The *Pandas* book."

22 Now, did I read that accurately?

23 A Yes.

24 Q So your understanding in March, when you were
25 deposed, was that in fact they were concerned that teaching

1 the *Pandas* book would be teaching religion?

2 A It says "at some point during the summer of 2004,"
3 and right now, I answered the way I did because I m thinking
4 that she did all this in October.

5 Q So does this refresh your recollection?

6 A It does, I know she said that. I would have to sit
7 here and really think to see when she said it, but that
8 was -- that s how it happened.

9 Q But you re not disputing now, after you ve looked
10 at this, that in fact the teachers were concerned about
11 teaching *Pandas* because they thought it was religion?

12 A No, I was just -- I was thinking it was October,
13 that s why I answered your question the way I did.

14 Q And you didn t frankly agree with the teachers that
15 *Pandas* was teaching religion, right?

16 A No, no, I did not agree with the teachers, no.

17 Q And you thought their position that *Pandas* taught
18 religion was unfounded?

19 A Right.

20 Q But you never read *Pandas*, right?

21 A No.

22 Q Now, prior to the October 18th vote to change the
23 curriculum, do you recall the science teachers explaining
24 that intelligent design was not science?

25 A Yes.

1 Q And you never asked them any more questions about
2 their position why they didn t think this was science?

3 A No.

4 Q And you will recall also that Ms. Spahr expressed
5 concerns that she thought intelligent design was religious?

6 A Yes.

7 Q And you knew that the teachers were opposed to
8 introducing this intelligent design change because they were
9 afraid they were going to get sued for teaching religion?

10 A Yes.

11 Q And so the only people in the school district that
12 you re aware of that have a science background were opposed
13 to introducing intelligent design; they thought it wasn t
14 science, they thought it was religion, and you ignored that?

15 A Yes.

16 Q And you voted for the proposal because
17 Mr. Buckingham and Mr. Bonsell encouraged you to do so?

18 A I agreed with them, that s why I voted for the
19 proposal.

20 MR. WALCZAK: Your Honor, I have about ten more
21 minutes, but if we want to take a break, we could do that
22 now or we could finish up.

23 THE COURT: Why don t you finish up. Why don t we
24 push on. Maybe we can conclude this witness before we
25 break, if you don t mind.

1 BY MR. WALCZAK:

2 Q I want to direct your attention to the two exhibits
3 that Mr. Gillen handed you during your direct testimony.
4 One is plaintiffs exhibit 56, and that would be
5 Ms. Eveland s letter, and plaintiffs 60, which is your
6 reply.

7 Now, when you wrote your response letter, you
8 didn t consult with anyone before you wrote it, did you?

9 A No.

10 Q You didn t talk to the administration.

11 A No.

12 Q You didn t talk to the -- your fellow board
13 members.

14 A No.

15 Q But you did sign it as a member of the Dover
16 Area -- as a Dover Area School Board director.

17 A Yes.

18 Q Now, to the best of your knowledge, what was
19 printed is what you submitted to the paper.

20 A To the best of my knowledge; I know the title
21 wasn t.

22 Q They put the title on?

23 A Right.

24 Q But the text of the letter is what you actually
25 sent.

1 A To the best of my knowledge, yes, it was.

2 Q Now, let s look at the second paragraph of your
3 letter, and could you read that, please; that s plaintiffs
4 exhibit 60.

5 A "I do not believe in teaching revisionist history.
6 Our country was founded on Christian beliefs and principles.
7 We are not looking for a book that is teaching students that
8 this is a wrong thing or a right thing, it is just a fact."

9 Q And that paragraph was responding primarily to
10 Ms. Eveland s first paragraph, correct?

11 A Yes.

12 Q And you were upset that your colleague Bill
13 Buckingham had been attacked, I believe was the word that
14 you used in direct testimony.

15 A Part of it, yes.

16 Q And you didn t at any time say that wasn t said,
17 right, you were simply expressing support for
18 Mr. Buckingham s views?

19 MR. GILLEN: Objection, Your Honor, it
20 mischaracterizes her testimony.

21 MR. WALCZAK: She can answer that; she can deny
22 that, Your Honor.

23 THE COURT: I think it s fair cross. I ll overrule
24 the objection. I don t know if it s a mischaracterization.
25 She ll tell us if it is.

1 THE WITNESS: I didn't understand the question, so
2 you'll have to repeat it.

3 THE COURT: Joan, do you want to read the question
4 back, please.

5 (Question read.)

6 THE WITNESS: No, that's -- in my letter? I don't
7 understand.

8 BY MR. WALCZAK:

9 Q You were upset that Ms. Eveland had apparently
10 attacked your colleague, correct?

11 A Yes.

12 Q And you were coming to his defense.

13 A Yes.

14 Q Because you -- you didn't want to teach revisionist
15 history.

16 A Correct.

17 Q Right. This, as you say, our country was founded
18 on Christian beliefs and principles.

19 A Correct.

20 Q And you were not looking for a book to contradict
21 that.

22 A Well, we weren't looking for a history book. It
23 was all besides the point what she was saying. That has
24 nothing to do with anything else.

25 Q But here in this letter you're talking about

1 creationism.

2 A Yes.

3 Q Yes?

4 A Yes. I mean in the -- I ll agree, she was so I
5 referred to what she was saying, I was answering her
6 questions.

7 Q Now, in that last paragraph you used the word
8 creationism.

9 A Yes.

10 Q You say you can teach creationism without its being
11 Christianity?

12 A Correct.

13 Q And I believe you testified that in your religion
14 creationism refers to the first book of Genesis?

15 A Yes.

16 Q But you re not aware of any use of the term
17 creationism that isn t associated with some religion?

18 A Correct.

19 Q And you didn t use the term intelligent design in
20 this letter either, did you?

21 A No.

22 Q Now, you also talked about being misquoted at the
23 October 18th board meeting?

24 A Yes.

25 Q And I believe you said that Mr. Maldonado had

1 written something implying that you had said that if the
2 teachers asked for legal representation they should be sued,
3 correct?

4 A Something --

5 Q And you -- you deny that you meant the teachers.

6 A Correct.

7 Q So you were really upset by that?

8 A Oh, of being misquoted, yes.

9 Q And so you didn't want to let that stand, you
10 wanted to correct the record.

11 A Yes.

12 Q And so in fact you contacted the administration.

13 A Yes.

14 Q And at least you claim you talked to Mr. Maldonado.

15 A Yes.

16 Q You didn't seek him out, did you; you didn't call
17 him in his office?

18 A I had planned to at the next meeting, but I ended
19 up seeing him before then.

20 Q So you didn't -- it wasn't like the next day you re
21 on the phone calling the York Daily Record?

22 A It was that day or the day after that I had seen
23 him at school.

24 Q So you happened to run into him somewhere when you
25 were out and about town?

1 A I saw him, and I turned around and went back and
2 talked to him, yes.

3 Q So you were really upset, so you wanted to make a
4 point that in fact he had misquoted you and that the
5 newspaper was wrong.

6 A Yes.

7 Q You didn't do that any other time, did you,
8 specifically speak to a reporter about being misquoted?

9 A I'm trying to think if that was the first time.
10 It's like an ongoing thing. I don't know if that was the
11 first time or not. I mean, it's with Joe and everyone, it's
12 like, hi Joe, you misquoted me, yes.

13 MR. WALCZAK: Thank you. No further questions.

14 THE COURT: All right. Redirect.

15 MR. GILLEN: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. GILLEN:

18 Q Heather, I've just got a few questions by way of
19 follow up on the questions that Mr. Walczak has asked you.

20 He asked you whether in your letter you were
21 talking about creationism, and I'm not sure what was your
22 response to that question. Were you talking about
23 creationism?

24 A At the bottom when I was referring to her. But at
25 the beginning when I was telling her what we were doing, no,

1 I was not.

2 Q Okay. And at the beginning what were you talking
3 about?

4 A What we were doing, intelligent design, prevalent
5 theories.

6 Q And then you say at the bottom you were talking
7 about creationism; what do you mean by that?

8 A She had said that we were teaching religion or
9 creationism, whatever, and I was telling her we were not,
10 the school does not teach that, but you can, you can do it,
11 that s part of our mission statement, that in partnership
12 with family. So I was telling her what she could do.

13 Q What -- let me ask you this. There s -- you know,
14 it s hard to remember, there s been some back and forth
15 about the dates, and Mr. Walczak asked you a few questions
16 about your deposition testimony. Did you understand that
17 the text *Of Pandas* addressed intelligent design?

18 A Yes.

19 Q With that in mind, I would ask you to look at your
20 deposition testimony, page 56. And I would ask you to
21 review your testimony there beginning on line six, and I m
22 just going to make sure that this is understood.

23 Mr. Schmidt asked you, "Have you heard of the book
24 *Of Pandas and People* in connection with your being a member
25 of the school board?" And what was your answer?

1 A "Yes."

2 Q And then Mr. Schmidt asked you, "How did you hear
3 it?" And what was your answer?

4 A "That is a book that Bill brought up so we can use
5 it as a reference book to balance the curriculum."

6 Q And Mr. Schmidt asked you, "When did he bring it
7 up?"

8 MR. WALCZAK: Your Honor, I m going to object.
9 This is hearsay. I don t believe --

10 MR. GILLEN: It s a prior consistent statement
11 which is being used to rebut a charge. She s just offered
12 an inconsistent statement.

13 THE COURT: The question -- the question was, and
14 Mr. Schmidt asked you, "When did he bring it up?" Your
15 objection?

16 MR. WALCZAK: Your Honor, I m not sure why she s
17 testifying from her deposition here. I mean, if it s to
18 complete context for something I did on impeachment, that s
19 one thing, but I m not sure how this is completing the
20 context.

21 MR. GILLEN: That s precisely the purpose. There
22 has been an inference created that Mrs. Geesey has offered
23 inconsistent testimony based on her deposition. What I m
24 trying to do is demonstrate right here that her deposition
25 testimony is in fact consistent.

1 THE COURT: All right, I ll allow it for that
2 purpose. The objection is overruled.

3 BY MR. GILLEN:

4 Q Mr. Schmidt asked you, "When did he bring it up?"
5 And what did you respond?

6 A "I don t know."

7 Q And then you said -- Mr. Schmidt asked you, "Well,
8 did he bring it up at a board meeting or in some other
9 context?" And how did you answer?

10 A "A board meeting."

11 Q And Mr. Schmidt quite carefully asked you, "I m
12 just trying to put it together, so far we have had two
13 meetings in June and one in July. Did he discuss the book
14 *Of Pandas and People* at any of those three board meetings?"
15 And what was your answer?

16 A "Yes."

17 Q Today when you were discussing intelligent design
18 being brought up, when do you recall it being brought up?

19 A In June.

20 Q Is there anything that has come to your attention
21 in connection with your preparation that has allowed you,
22 has refreshed your recollection and allowed you to date with
23 somewhat more precision when you first heard the term
24 intelligent design being used?

25 A Yes.

1 Q Please explain what that is.

2 A These two letters, one is dated June 20th, one is
3 June 27; mine is June 27th. So, you know, by reading it I
4 know that I knew.

5 MR. GILLEN: No further questions, Your Honor.

6 THE COURT: Any recross, Mr. Walczak?

7 RE CROSS EXAMINATION

8 BY MR. WALCZAK:

9 Q Ms. Geesey, if you could look on page 56 again, and
10 Mr. Gillen was reading to you about -- asking you about
11 *Pandas* being discussed at those meetings. And you said, two
12 meetings in June and one in July. He said, did he discuss
13 the book *Of Pandas* at any of those three meetings, and your
14 answer was yes, is that correct?

15 A That s what it says there, yes.

16 Q And just reading on three more lines, Mr. Schmidt
17 asked you, "Do you remember which one?" And your answer was
18 "No."

19 A Correct.

20 MR. WALCZAK: Thank you. No further questions.

21 THE COURT: I have a question before you step down,
22 Mrs. Geesey, because I m confused.

23 THE WITNESS: So am I.

24 EXAMINATION

25

1 BY THE COURT:

2 Q Well, it s more important that I m not confused
3 than you re not confused. But the question is this: I read
4 your deposition testimony as it was presented, and it
5 appears to me that your deposition testimony -- I m reading
6 it as clearly as I can -- indicates that you answered in the
7 negative, that is you said no, that intelligent design was
8 not mentioned at either of the June meetings. Is that what
9 happened or not?

10 A No. By refreshing my memory with my article, it
11 was June 27th.

12 Q But you use the word article. Are you talking
13 about the two letters, the letter and the letter by -- is it
14 Mrs. Evland?

15 MR. WALCZAK: Eveland.

16 THE COURT: What is it?

17 MR. WALCZAK: Mrs. Eveland, is one of the
18 plaintiffs.

19 BY THE COURT:

20 Q Are you talking about Mrs. Eveland s letter and
21 your letter in response? That refreshes your recollection,
22 how?

23 A Because I read it and, I mean, I know that --

24 Q What in those letters -- what particular area of
25 either of those letters, or both, leads you to believe that

1 intelligent design was discussed at the June meeting?

2 A I just --

3 Q What? Point me to what in the letter, not
4 generally, but specifically.

5 A That I thought --

6 Q I asked you that question because I don't see the
7 words intelligent design.

8 A Right. The part where it says "what we are doing."
9 I -- since all the meetings run together, I didn't realize
10 back then that I knew everything that was going on because
11 it's not my committee. But by me saying that what we were
12 doing was to choose a book that teaches the most prevalent
13 theories, I mean that -- that's what I was talking about.

14 I mean, I already knew that they were doing
15 something, and before I couldn't tell the meetings apart.
16 So I kept saying, no, I don't remember, because I couldn't
17 tell them apart when they would say did it happen then, and
18 I wasn't sure of when it happened.

19 Q I don't recall prior testimony that *Of Pandas and*
20 *People* was discussed at the June meetings. I'll stand
21 corrected if it was.

22 Is it your testimony that *Of Pandas and People* was
23 raised at the, either or both of the June school board
24 meetings; is that what you're saying?

25 A It was raised some time, but again --

1 Q Well, we know that; I m asking when.

2 A I know it was August because I know Bill was upset
3 that it wasn t on the agenda. So I m for sure that it was
4 by then. But I don t know.

5 Q You don t know when it was before August?

6 A Right, it all runs together. I just know that is
7 what his concern was in August, that s why it sticks out
8 then, because it wasn t on the agenda with the other book.

9 THE COURT: All right.

10 MR. WALCZAK: Your Honor, if I might just ask --

11 THE COURT: I m going to allow both in fairness,
12 I m going to allow both counsel. Let s start with, since I
13 asked the question, if you have a follow up to my question,
14 it s your witness, do you have any follow up to my question?

15 MR. GILLEN: Sure.

16 REDIRECT EXAMINATION

17 BY MR. GILLEN:

18 Q Heather, the Judge s questions are fair, but I
19 mean, it s hard to put it together, but do you as you sit
20 here today believe that intelligent design was brought up at
21 the June -- during the June meetings?

22 A Yes.

23 MR. GILLEN: No further questions, Your Honor.

24 RECROSS EXAMINATION

25

1 BY MR. WALCZAK:

2 Q Ms. Geesey, at your deposition in March of 2005.

3 A Yes.

4 Q That was closer to the events in question than we
5 are now, correct?

6 A Yes.

7 Q You were shown both of Ms. Eveland s letter and
8 your letter, correct?

9 A I was shown mine. I -- I don t know if I was shown
10 hers. I don t know.

11 Q But you were shown your letter?

12 A I believe so, yes.

13 Q And in fact Mr. Schmidt asked you numerous
14 questions about your letter.

15 A He did ask me questions, yes.

16 Q And at that time you didn t say anything about it
17 prompting your memory that intelligent design was taught
18 (sic) in June or July.

19 A No, it was four or five hours and no, everything
20 was all together, so I could not separate it for him.

21 MR. WALCZAK: Thank you.

22 MR. GILLEN: One question. Redirect. Judge, one
23 question, please.

24 THE COURT: I don t know what you could possibly
25 hope to achieve, but I m going to give you one question and

1 one only.

2 MR. GILLEN: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. GILLEN:

5 Q Heather, do you recall whether you were shown that
6 letter before or after the testimony that Mr. Walczak
7 focussed on?

8 A I would believe after, because that s how it works.

9 MR. GILLEN: No further questions, Your Honor.

10 THE COURT: You get one more to be fair, and this
11 is the last round.

12 MR. WALCZAK: I guess I have to be very careful
13 about how I use my one question.

14 THE COURT: Choose carefully.

15 MR. WALCZAK: Wish for more wishes.

16 RECROSS EXAMINATION

17 BY MR. WALCZAK:

18 Q Mrs. Eveland (sic), in preparation for your
19 deposition you looked at both Ms. Eveland s letter and your
20 letter?

21 A I don t know.

22 THE COURT: Nice try. All that time, you get an "I
23 don t know."

24 All right, that will complete your testimony,
25 ma am, you may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Do we have any exhibits with this
3 witness?

4 THE DEPUTY CLERK: No exhibits, they would --

5 THE COURT: I think the exhibits referred to are
6 already in.

7 Now, we re going to take a break. After we return
8 from the break, are we going to resume Mr. Baksa s testimony
9 or what is your pleasure? What do you want to do?

10 MR. GILLEN: Judge, given the hour, my preference
11 would be not to break him again. I would like to just get
12 him moving and finish it when I do put him on. I ve got
13 someone coming in from Florida on Monday I want to get done,
14 and then Mr. Bonsell, so I would prefer to wrap it up.

15 MR. ROTHSCHILD: I m going to be a strong advocate
16 for the other position. I think --

17 THE COURT: Why don t you approach, counsel,
18 please.

19 (Whereupon, sidebar conference held between
20 Court and counsel off the record.)

21 THE COURT: All right, what we re going to do is
22 we ll take a 15 minute break, and now a little bit shorter
23 break, and we will resume with another portion of
24 Mr. Baksa s testimony on direct. We will not finish the
25 direct examination today, but we ll spend some remaining

1 time. I would guess that we ll go approximately no later
2 than 4:15, let s say, this afternoon. We ll -- and if you
3 see a break point earlier than that, you can finish earlier
4 than that, but I think we should spend the time, as we said
5 at sidebar, to pick up a little bit more of Mr. Baksa s
6 testimony and then we ll break for the weekend. So we ll
7 take a 15 minute break.

8 THE DEPUTY CLERK: All rise.

9 (Whereupon, a recess was taken from 3:09 p.m.
10 to 3:28 p.m.)

11 THE COURT: All right. By agreement we re going to
12 have a brief resumption of, relatively brief resumption of
13 Mr. Baksa s testimony.

14 Mr. Baksa, you may take the witness stand. And
15 we ll allow, when he does so, you remain under oath, sir,
16 and Mr. Gillen you can pick up where you left off.

17 (Witness Michael Baksa resumes witness
18 stand.)

19 MR. GILLEN: Thank you, Your Honor.

20 DIRECT EXAMINATION (Cont d.)

21 BY MR. GILLEN:

22 Q Mike, when we left off we were leaving the July
23 meeting where the 2004 edition of Miller and Levine had come
24 to the attention of the teachers. And I want to capture
25 your mind set now as we begin to move forward.

1 As you sit here today looking back at events in
2 2004, did you remember Bill Buckingham using the term
3 creationism in his discussions with you up until this point
4 right now, which is July 12th, 2004?

5 A No.

6 Q Had any other board member discussed teaching
7 creationism with you in the classes of Dover High School up
8 until this point in 2004?

9 A No.

10 Q Do you remember Barrie Callahan -- let me ask you
11 first. Do you remember Mr. Buckingham using the term
12 creationism at a board meeting up -- sometime prior to this
13 point?

14 A Yes.

15 Q Okay. And do you remember Barrie Callahan calling
16 you with a question about a text which addressed
17 creationism?

18 A Yes.

19 Q What did you tell Mrs. Callahan in response to her
20 call?

21 A That we re not going to find a text that has
22 creationism for teaching in the public schools.

23 Q Okay. And I want you to explain that answer,
24 because it could be subject to a number of understandings.
25 Were you looking for a text that included creationism?

1 A No.

2 Q Well, when Mr. Buckingham used the term creationism
3 at the board meetings, did you have an understanding or did
4 you act on it?

5 A No.

6 Q And why is that?

7 A First, I was surprised to hear Mr. Buckingham say
8 creationism. I hadn't heard that before from him.

9 My understanding is our search for textbooks
10 continues to be, and continued to be, that we were looking
11 for a treatment of Darwin in textbooks that the board would
12 be satisfied with. And just board members saying something,
13 their wishes or desires at a board meeting, that would not
14 cause me to take any formal action.

15 Q Well, let's look at that because that is plainly
16 important here. From your standpoint as an administrator
17 for the school district, if we look at what you understand
18 is a sign of action, something that's going to make you take
19 serious steps, how do you look at that process, what does it
20 take?

21 A For me to pursue any type of research or action, a
22 board member would -- or more than one board member would
23 have to sit down with me and ask me to specifically explore
24 an area, and then I would follow up on that. But if -- you
25 know, if there's just comments made at the general board

1 meeting, that s not directing me to take any formal action.

2 Q Okay. We left off with you learning that there was
3 a 2004 edition of the *Biology* text by Miller and Levine.
4 What happened next that related to the *Biology* text?

5 A I reviewed the new 2004 edition with the 2002
6 edition with Mrs. Spahr and Ms. Miller.

7 Q Okay. And with that in mind, Mike, I would ask you
8 to look at defendant s exhibit 24. Do you have it, Mike?

9 A Okay.

10 Q Okay. Do you recognize that document?

11 A Yes.

12 Q What is it?

13 A These are my notes from my meeting with Mrs. Miller
14 and Mrs. Spahr.

15 Q Well, tell us about that meeting.

16 A What we did is we -- Jenn was sitting next to me
17 and one of us had the old edition, one of us had the new
18 edition, and we went through the chapters dealing with
19 evolution, and we compared the text side by side, line for
20 line, and then noted any changes. And the teachers, for the
21 most part, explained the science of the changes to me and
22 what was different.

23 Q Did you derive a general understanding about
24 nature -- the nature of changes in the text from the 2002 to
25 the 2004 edition as a result of this meeting?

1 A Yes. We thought that they definitely had softened
2 some of the language for the evidence from species to
3 species. It seemed to address a lot of the same pages
4 that -- or areas that Mr. Buckingham had concerns with.

5 Q Well, from your standpoint as an administrator
6 looking at some of the complaints that Buckingham had made
7 about the text, were there any other specific changes that
8 seemed to address those concerns?

9 I mean, look at your notes and just see if it
10 refreshes your recollection.

11 A This section included -- yeah, the one -- the
12 one -- another area is gaps. There was -- there actually
13 was language that talked about gaps, and there was like a
14 paragraph that talked about the strengths and weaknesses of
15 evolution.

16 Q Do you recall any discussion with the teachers
17 about the nature of the changes and whether it made the book
18 more desirable?

19 A Well, there s two questions I asked. One was did
20 they feel that any of the changes left out any critical
21 information that they felt necessary to teach, and they
22 didn t feel that happened. But they did feel that knowing
23 the concerns of Mr. Buckingham, that these changes did
24 address them.

25 Q Did the board curriculum committee meet as a

1 committee to discuss these changes?

2 A No.

3 Q Did you meet with any committee members to discuss
4 the changes?

5 A I met with Mr. Buckingham.

6 Q And tell us what you told Mr. Buckingham.

7 A I brought this with me and reviewed these changes
8 with Mr. Buckingham, and said that I thought that this
9 text -- the new edition really did address his concerns,
10 that it didn't make so strong a case for evidence from
11 species to species and it talked about gaps. And tried to
12 point through all of these pages where we noted changes, I
13 showed all of those to Mr. Buckingham.

14 Q Did you have an impression as to Mr. Buckingham's
15 response to this information?

16 A He didn't respond at the meeting. He took my notes
17 and the new edition home with him. But at the meeting he
18 just listened to me.

19 Q Did you hear from him subsequently?

20 A Yes, later he called me.

21 Q And what did you learn as a result of that
22 conversation?

23 A Bill called me and said he still couldn't approve
24 the book.

25 Q And what did you do in response to his objection --

1 continued objection?

2 A The -- well, we went forward placing the book on
3 the August agenda. And shortly after this I think I
4 received a note from him about including *Pandas*.

5 Q Okay. Let s look at this process as it unfolds.
6 I d ask you to look at exhibit -- defendants exhibit 25.

7 A Okay.

8 Q Do you recognize that document, Mike?

9 A Yes.

10 Q What is it?

11 A That s a note to Dr. Nilsen s secretary to place
12 Miller and Levine on the agenda for approval and purchase.

13 Q You say you went forward despite Mr. Buckingham s
14 objection. Why did you do that?

15 A I was still trying to address Mr. Buckingham s
16 concerns, but we needed to -- August was late in the day if
17 we were going to get a book in the student s hands. So we
18 needed to continue to move forward to get that book approved
19 and purchased in August.

20 Q Did you put it on the agenda despite his objection?

21 A Yes.

22 Q Did there come a time -- you mentioned *Of Pandas*,
23 did there come a time when he brought another text to your
24 attention?

25 A *Of Pandas and People*.

1 Q Okay, with that in mind, I would ask you to look at
2 defendants exhibit 26. And do you recognize that document,
3 Mike?

4 A Yes.

5 Q What is it?

6 A This is a note from Mr. Buckingham asking *Of Pandas*
7 *and People* to be placed on the August agenda along with
8 Miller and Levine.

9 Q Did you do anything in response to this document?

10 A Yes.

11 Q Tell us what you did.

12 A I shared this with Dr. Nilsen, and then Dr. Nilsen
13 and I set up a meeting with Bill in Dr. Nilsen s office.

14 Q Did you have an understanding concerning the
15 purpose of that meeting?

16 A For -- well, two. One, we wanted to make sure that
17 we kept moving forward for the purchase of the Miller and
18 Levine. And the second, in talking with Dr. Nilsen,
19 Dr. Nilsen was not going to approve the purchase of an
20 individual book for -- *Of Pandas and People* for all of the
21 students.

22 Q Let s -- let me ask you, did the meeting with
23 Mr. Buckingham occur?

24 A Yes.

25 Q Who was in attendance?

1 A Mr. Buckingham, myself and Dr. Nilsen.

2 Q And tell us what you can recall about that meeting.

3 A Dr. Nilsen ran that meeting. I remember him
4 telling Bill and making it clear that he is not going to
5 recommend the purchase *Of Pandas and People*, which meant
6 that for a book to be approved, it would need six votes
7 instead of five, you re overriding the superintendent s
8 recommendation.

9 Q Well, what about Bill s position, did he come to
10 this position -- this meeting with a position that he
11 articulated?

12 A I think Bill wanted the students to have the
13 Miller-Levine book alongside *Of Pandas and People*, and he
14 wanted the teachers to be teaching out of both, side by
15 side.

16 Q Okay. Well, did either you or Rich Nilsen respond
17 to that request on Bill s part?

18 A Dr. Nilsen offered a compromise position that --
19 that the -- instead of purchasing books for individual
20 students, that we would simply have a classroom set
21 available to students.

22 Q Mike, if you d push that mike away a little bit.

23 A Sorry.

24 Q Don t break it, push it by the stem, push it by the
25 stem back a little, you ll probably get a little less puh.

1 Did you come away with the sense that this meeting
2 had produced results?

3 A It was our -- our understanding at the end of this
4 meeting that we would approve the Miller-Levine book at the
5 August meeting, that we would wait for teachers to take a
6 look at *Of Pandas and People*, consider its use, and possibly
7 that would be as a classroom set. And it s our
8 understanding that if we did do that and did have some
9 consideration *Of Pandas and People* that Bill would approve
10 Miller and Levine.

11 Q And you say some consideration *Of Pandas and*
12 *People*, be more specific, what did you have in mind?

13 A Well, originally when we got *Of Pandas and People*,
14 I remember Dr. Nilsen and I thinking at the first that we
15 could possibly purchase these for the teachers and they
16 could have them just as a personal reference.

17 When Bill was suggesting, you know, kind of a more
18 rigorous use of the book in instruction, then Dr. Nilsen
19 suggested a compromise position, just being in the
20 classroom. But at this point we hadn t had any discussion
21 with the teachers on, you know, what they would find
22 acceptable for the use *Of Pandas*, and we were asking for
23 time to be able to have those discussions.

24 Q Well, defendants exhibit 26 is dated -- that is
25 defendants exhibit 26 is dated July 25, 2004. What

1 happened next for you?

2 A I went on vacation.

3 Q And it was too short I know, but --

4 A Yes.

5 Q -- do you know if Dr. Nilsen took any steps for you
6 relating to the discussion you ve just described while you
7 were on vacation?

8 A Dr. Nilsen scheduled the meeting with the board
9 curriculum committee and the science teachers for the end of
10 August to discuss the use *Of Pandas and People*.

11 Q Were you in attendance then for the August 2nd,
12 2004 meeting?

13 A Yes.

14 Q August 2nd, 2004 --

15 A No, I m sorry.

16 Q -- meeting of the board.

17 A No.

18 Q Okay. Let me ask you to look at defendants
19 exhibit 30.

20 A Okay.

21 Q Did this document greet you on your return?

22 A Yes.

23 Q And you recognize it?

24 A Yes.

25 Q What is it?

1 A It s a memo that talks about a meeting that will be
2 held on August 27th to discuss *Of Pandas and People*.

3 Q And what was the subject of that meeting?

4 A How we might -- sitting down with the teachers and
5 the board curriculum committee, how we might make use of *Of*
6 *Pandas and People*.

7 Q Did that meeting occur?

8 A Yes.

9 Q Did you take notes of that meeting?

10 A Yes.

11 Q And I would ask you to look at defendants exhibit
12 31.

13 A Okay.

14 Q Do you recognize that document?

15 A Yes.

16 Q What is it?

17 A These are my notes from that meeting.

18 Q Do you recall if there was anything handed out at
19 this meeting on August 27th, 2004?

20 A Dr. Nilsen handed out an e-mail from our solicitor,
21 Steve Russell, and he handed out a draft of the biology
22 curriculum.

23 Q There s been some discussion of the e-mail. How
24 about the draft curriculum, do you know -- do you recall
25 anything specifically about that document?

1 A I do remember when Dr. Nilsen passed it out, that
2 Mrs. Spahr reacted, was very upset with it saying we never
3 agreed to ID being in the curriculum, and they weren't
4 involved in the creation of this.

5 MR. ROTHSCHILD: Your Honor, I just want to clarify
6 for the record. I don't think this is a document, speaking
7 about the draft curriculum, that's ever been produced.

8 MR. GILLEN: Mr. Rothschild is quite correct. The
9 document no longer exists.

10 MR. ROTHSCHILD: Thank you.

11 THE COURT: All right.

12 BY MR. GILLEN:

13 Q Well let's see, you've said that Bert said we
14 didn't agree to this. What was she getting at? What can
15 you recall?

16 A Well, it was my understanding from the end of the
17 June meeting that that was language that we talked about,
18 Mr. Buckingham and the teachers were agreeable to, you know,
19 from what I remember of the meeting I thought I read that
20 back and we were in agreement with that.

21 I don't know why Dr. Nilsen brought that to the
22 meeting, but once it was out there, then at the end of the
23 meeting I remember Mr. Bonsell directing me to work with the
24 teachers then to come up with language that they would agree
25 to.

1 Q Let s look at -- who said what, to the extent you
2 can remember it. Do you remember any of the teachers
3 expressing any concerns about litigation?

4 A Mrs. Spahr -- I don t specifically remember, but
5 almost every instance Mrs. Spahr did feel that intelligent
6 design was the same as creationism and might lead to
7 litigation.

8 Q How about Mr. Bonsell, do you recall him making any
9 comments at this meeting?

10 A In talking about *Of Pandas and People*, there was
11 requests by board members that we pursue its use in the
12 schools to see if there s ever been any litigation involving
13 the book, if there s ever been any litigation involving
14 intelligent design, and --

15 Q How about in terms of evolutionary theory, did he
16 articulate anything specifically?

17 A Mr. Bonsell wanted to make sure that in the
18 curriculum language that we were going to develop for the
19 biology curriculum, that the teachers pointed out not only
20 that it has flaws or gaps, but also to show what those are.

21 Q How about Mr. Buckingham, the meeting was about *Of*
22 *Pandas*, did he articulate a position at this meeting?

23 A Again, Mr. Buckingham wanted to move quicker than
24 we wanted to, so we were asking him to wait, give us some
25 time here that we might be able to take some action with the

1 book in October. And I think I remember him wanting to move
2 quicker than that --

3 Q Did he?

4 A -- do something in September.

5 Q I m sorry, Mike.

6 Did you get an understanding of what Mr. Buckingham
7 regarded as the desirable use of the text during this
8 August 27th meeting?

9 A I think he was -- I don t remember specifically,
10 but I think he was still advocating individual students use
11 them. I know Mrs. Spahr recommended that the books be
12 placed in the library. But we didn t -- at the end of the
13 meeting, I don t remember us coming up with a clear
14 direction exactly what we re going to do with the books.

15 Q Let s look at the end of the meeting. When you
16 came away from this meeting were there any results?

17 A Yes.

18 Q Tell us what they were.

19 A I was going to work with the teachers to develop
20 curriculum language, and then I was to -- once they
21 developed that, I was to send that to the full board for
22 their review.

23 Q How about with respect to any duties you had about
24 *Of Pandas*, did you come away with tasks?

25 A I don t -- I don t remember doing anything *Of*

1 *Pandas* other than continuing to talk to teachers about its
2 possible use.

3 Q Well, let me ask you this, Mike. There s some
4 documents here I just want you to explain. Look at 32, 33,
5 34, 35.

6 A Okay.

7 Q 36, 37, 38, 39, 40, 41, 42. There s one more in
8 there, it s an outline which I believe is in that other
9 folder you have. Do you recognize these documents I ve just
10 drawn your attention to, Mike?

11 A Yes.

12 Q What are they?

13 A Umm, these are all my notes from my research on *Of*
14 *Pandas and People*, its use, and any litigation that was
15 involved.

16 Q Let me, if you would, also take a look at 116,
17 which is in that little auxiliary folder.

18 A 116?

19 Q Yes.

20 A I don t see 116 in here.

21 Q That s unfortunate, hold on a second. You know
22 what, look at volume two, Mike.

23 A Okay.

24 Q Do you have it?

25 A Yep.

1 Q Do you recognize that?

2 A Yes.

3 Q All right. And I didn't want to belabor this
4 process, so if you can, having looked at them, just tell us
5 generally what these documents relate to and what you
6 learned as a result of the process that created these
7 documents.

8 A Just 116 or all that you referenced before?

9 Q All of them generally.

10 A 116 is a result of an inquiry about the book from
11 the publisher, and then they sent this information back. I
12 had learned from the Foundation for Thought and Ethics that
13 the book was used in Tomball, Texas, and Dr. Gillen was
14 there and used the book in that district, and I did call and
15 talked to Dr. Gillen about the use of its book.

16 Q Let's go through them real quick, just for the sake
17 of, you know, explaining them for the record.

18 That's 116. What's defendant's exhibit 32?

19 A That's just information on the title and the
20 publisher of *Pandas and People*.

21 Q And then defendant's exhibit 33, do you recognize
22 that?

23 A Right, that's just a -- getting information on the
24 cover and where we might -- where we might seek purchasing
25 it.

1 Q Okay. And there s a Post-it on there. What does
2 that Post-it note describe, Mike?

3 A Haughton Publishing Company and their address.

4 Q Next is defendants exhibit 34. If you would just
5 tell us briefly what that document is.

6 A I believe this is from my conversation with
7 Foundation for Thought and Ethics where they gave me
8 information about Dr. Gillen and how I might contact him.

9 Q Defendants exhibit 35, what is that?

10 A Again, that looks like an on-line service where you
11 might purchase *Of Pandas and People*.

12 Q Defendants exhibit 36, what is that?

13 A Those are my notes from an administrator in
14 Tomball, Texas.

15 Q And you say Tomball, Texas, what is Tomball?

16 A A high school.

17 Q Did you have an understanding concerning whether
18 the text was being used at that high school?

19 A Currently when I talked to Melony Windows she did
20 not know -- she didn t think the text was being used and
21 didn t believe that they even had them anymore.

22 Q Had it been used at one time?

23 A Yes, by Dr. Gillen.

24 Q Defendants exhibit 37.

25 A Again, that s just my notes for the phone number

1 for Melony Windows.

2 Q In the lower right-hand portion of that document
3 there s a notation 12.2 or higher. Can you tell us what
4 that relates to?

5 A I asked Dr. Butterfield, our language arts
6 supervisor, to do a readability study on *Of Pandas and*
7 *People*.

8 Q And why did you do that?

9 A To determine the appropriateness for ninth grade
10 students.

11 Q And defendants exhibit 38, if you would just
12 briefly describe that.

13 A Those are my notes from my conversation with
14 Dr. Gillen.

15 Q And, again, just briefly summarize the information
16 you received as a result of your discussion with
17 Dr. Gillen -- no relation.

18 A Dr. Gillen said that he had used *Of Pandas and*
19 *People* in his AP biology class as reference material that
20 students could use and even respond in test with some of
21 those materials. That he had initiated that use on his own
22 and the board agreed with it. That he had the books donated
23 to him. And then when I asked him about the
24 appropriateness, he thought the overview section of the book
25 would be appropriate for ninth graders, but he did think the

1 later sections that went into more detail might be a little
2 difficult for them.

3 Q And, again, I don't want to belabor this process.
4 Were these documents all the result of your background
5 checks, so to speak, into *Of Pandas*?

6 A Yes.

7 Q Let me ask you, you mentioned some discussion of
8 making students aware of intelligent design at this August
9 meeting. Did you have any -- anything concrete in mind at
10 that time, in August? Did you come away from this August
11 meeting with a sense that the teachers were open to at least
12 some reference to intelligent design?

13 A From the August meeting where we discussed *Of*
14 *Pandas and People*?

15 Q Yes.

16 A No, Bert was pretty insistent that she didn't like
17 intelligent design in the curriculum.

18 Q Okay. How about the text *Of Pandas*, what was your
19 sense for how that might be used?

20 A Well, it wasn't settled at that meeting. You know,
21 Bert was recommending the library, but we really didn't
22 decide exactly how it was going to be used.

23 Q Do you recall Dr. Nilsen offering any response to
24 Bert's suggestion?

25 A Bert's suggestion that they be in the library?

1 Q Yes.

2 A I don t remember him responding to that.

3 Q Was there any discussion of other uses of the text
4 at that August 27th meeting?

5 A *Of Pandas and People?*

6 Q Yes.

7 A I think Bill still wanted it for individual
8 students and taught side by side.

9 Q All right. There was some discussion of the
10 curriculum change at the August 27th meeting or potential
11 curriculum change, is that correct?

12 A Yes.

13 Q Would you look at defendants exhibit 54.

14 A Okay.

15 Q Do you recognize that, Mike?

16 A Yes.

17 Q What is it?

18 A It s the curriculum for the biology course.

19 Q Okay.

20 A No, I m sorry. This is -- this is the Pennsylvania
21 Academic Standards for teaching the biological sciences.

22 Q Are these the standards that were in place at the
23 time of this discussion?

24 A Yes.

25 Q Let s look at the standards. They speak to

1 teaching to the standards, and there s some discussion here
2 of making students aware. Did you see a distinction in your
3 mind between teaching to the standards and making students
4 aware of other concepts?

5 A Yeah, I don t see making students aware of
6 something as teaching, I see that as distinct.

7 Q And why is that?

8 A Well, when you take this specific content of
9 academic standards, there s a number of things you do to
10 teach it. First, you know, you secure instructional
11 materials that have that content in it, then you develop
12 instructional strategies to deliver that content to the
13 students and activities that they might use to gain an
14 understanding and learn the material. Then you assess that
15 content. And then you, from those assessments, you get
16 feedback from students on how well they did and re-teach it
17 if you have to. And all of that I believe is teaching.
18 When you just mention something, you don t do any of those.

19 Q Well, let s look at the information you had about
20 the teaching of biology in Dover Area High School as of this
21 time in August. Did you understand that the teachers taught
22 evolutionary theory as you have used that term here?

23 A Yes.

24 Q Did you understand that the teachers mentioned
25 anything else during biology classes?

1 A My understanding what the teachers did prior to
2 teaching evolution is that they would preface -- before they
3 began instruction on evolution, they would preface their
4 teaching with an explanation to students --

5 MR. ROTHSCHILD: Objection. His answer is going to
6 be, again, back door hearsay, similar to what we dealt with
7 before.

8 MR. GILLEN: And the answer is of the same nature,
9 Judge, as you ve said throughout, he can testify to his
10 understanding of what the teachers were doing.

11 MR. ROTHSCHILD: His -- the answer that s going to
12 be elicited is the statements of out-of-court declarants,
13 the teachers, about what they were doing for the truth of
14 what they were doing. And we ve had one of those teachers
15 up on the stand. There was an opportunity to ask about
16 this, and she was asked about it, and the other biology
17 teachers are under subpoena so they can be asked about it.

18 THE COURT: Well, but that s not the issue, I don t
19 think, Mr. Rothschild. I think it s his understanding.
20 Certainly they can, and their understanding or their
21 testimony about what their understanding was might be better
22 evidence than what his understanding is, but that doesn t
23 mean he can t say what his understanding is. And he did
24 answer the question. So I understand the point, but I ll
25 overrule the objection and the answer will stand.

1 BY MR. GILLEN:

2 Q Well, let me ask you again for your understanding
3 of this situation today. Contrast here the situation as it
4 exists in Dover Area School District as a result of the
5 curriculum change that was adopted by the board on
6 October 18th, 2004. Is it your understanding that they
7 teach intelligent design in biology classes at Dover Area
8 High School?

9 A No.

10 Q And why is that?

11 A Because my understanding is that all they re doing
12 is making students aware, mentioning intelligent design,
13 just as they had mentioned creationism and students having
14 other beliefs --

15 MR. ROTHSCHILD: Objection, Your Honor.

16 MR. GILLEN: He s testifying to his understanding,
17 Your Honor. It may be that the teachers were lying to
18 Mr. Baksa when they talked to him, but it s what he
19 understood.

20 THE COURT: Well, but that s not what he just
21 answered, he said they had mentioned. And on that basis the
22 objection is valid and I ll sustain the objection. You
23 know, we ve transcended the area of his understanding into a
24 recitation of what somebody said.

25 MR. GILLEN: Okay. And I don t intend to offer

1 that. I agree, and see what counsel is getting at to the
2 extent if someone would offer that out-of-court statement
3 for the truth of the matter asserted, and that s not what
4 I m doing.

5 THE COURT: What is it for?

6 MR. GILLEN: It s to establish what understanding
7 the board administration was operating on. And I fully
8 acknowledge that, you know, I don t think any of them
9 checked what was going on in the classroom, and I m not
10 offering it for that purpose.

11 MR. ROTHSCHILD: And I further object to the
12 implication that the teachers were lying about what they
13 were doing in the classroom. I think that mischaracterizes
14 the events and is unfair to the teachers.

15 MR. GILLEN: Yeah, and I m not saying that. I m
16 just saying they did not check -- they did not go out and
17 monitor the classrooms, but they did have an understanding,
18 and they did act on it, and that s my only purpose here.

19 THE COURT: Yeah, but perhaps it s late in the
20 week, and this has become too abstract for me, but I don t
21 know how you -- how you get to what the teachers said, and
22 that it doesn t go to the truth of the matter. I -- I can t
23 understand that.

24 MR. GILLEN: Well, Judge.

25 THE COURT: I can understand that he can testify as

1 to what his understanding is. We ve crossed that bridge.
2 We understand that. We ve -- we ve dealt with that. But as
3 it gets to statements collectively or singly by teachers,
4 that could only be -- that could only go to the truth or at
5 least partially at least to the truth in my view, and I
6 think that s hearsay.

7 MR. GILLEN: If it were offered for the truth, it
8 would be hearsay, and that is not my purpose. I m just
9 trying to establish these -- the board administration
10 proceeded on a certain path.

11 THE COURT: Well, you ll have to do that, in my
12 view, and obviously my view controls, you re going to have
13 to do it by -- by his understanding, without reference to
14 what they said.

15 MR. GILLEN: Okay.

16 THE COURT: And that s the only way we can do it,
17 so I ll sustain the objection on that basis.

18 BY MR. GILLEN:

19 Q Okay, let me ask you this, Mike. We re talking
20 about an August 27 2004 meeting. Did you leave that
21 meeting with a to do?

22 A Yes.

23 Q And tell me what you had in mind to do as a result
24 of this meeting?

25 A To research *Of Pandas and People*, and to work with

1 the teachers on developing curriculum language.

2 Q You talked about working on the curriculum. What
3 happened next in that area?

4 A I believe I -- I believe I initiated, I started,
5 wrote some draft language, and I sent it to the teachers for
6 them to review, and afterwards I received back their
7 recommendation in curriculum language.

8 Q Okay. With that in mind I would ask you to look at
9 defendants exhibit 43.

10 A Okay.

11 Q Do you recognize that document?

12 A Yes.

13 Q What is it?

14 A This is a memo from me to the board curriculum
15 committee with the draft from the teachers attached.

16 Q Is this a result of the process you ve described of
17 talking to the teachers?

18 A Yes.

19 Q I d ask you to direct your attention to the portion
20 of exhibit 43 with the Bate stamp number 29, in the lower
21 right-hand corner.

22 A Yes.

23 Q And I d ask you to explain, Mike, the ways in which
24 you see this document as reflecting the process you ve
25 described.

1 A I had originally created a draft, sent it to the
2 teachers, and the teachers sent back this draft that
3 included language, "the students will be made aware of gaps
4 in Darwin s theory and of other theories of evolution."

5 MR. ROTHSCHILD: Your Honor, again, I m not sure
6 what document Mr. Baksa is referring to that was sent to the
7 teachers. It was not this. I don t know that we ve been
8 produced.

9 MR. GILLEN: You have defendants exhibit 43.

10 MR. ROTHSCHILD: I understand that. But Mr. Baksa
11 suggested that he prepared something and sent it to the
12 teachers, and that they then prepared the page 29. And I m
13 trying to understand whether there s two different
14 documents, or whether this is what Mr. Baksa created and, as
15 the memo says, the teachers reviewed it.

16 THE COURT: Are we talking about the same document
17 or is there something different?

18 THE WITNESS: I don t remember if there was
19 anything, if the original draft that I sent them was
20 different than what they returned to me. I just don t
21 remember that.

22 MR. GILLEN: I think Mr. Rothschild s question may
23 be who created this page.

24 THE WITNESS: The teachers.

25 MR. GILLEN: Okay.

1 MR. ROTHSCHILD: Then I m trying to understand then
2 he s describing a draft.

3 THE COURT: Well, no, I think the question is, are
4 there two separate documents.

5 MR. ROTHSCHILD: Correct.

6 THE COURT: And is there something missing that you
7 don t have, isn t that --

8 MR. ROTHSCHILD: That is correct.

9 THE COURT: -- the essence of your point?

10 Do you understand his point? Is there a document
11 that you re referring to that isn t this?

12 THE WITNESS: Yeah, I don t have the -- the
13 curriculum was written over each time it was edited, so what
14 I originally sent to the teachers, I don t have that
15 document.

16 THE COURT: Is that the document that Mr. Gillen
17 previously said does not exist, or is that yet another
18 document that doesn t exist? Are we talking about two
19 different documents now that don t exist?

20 THE WITNESS: I think we re talking about two now.

21 MR. ROTHSCHILD: I don t have another document, and
22 it s not here.

23 THE COURT: I understand. You don t have it
24 because they don t exist apparently, is that the point? Do
25 you have an objection?

1 MR. ROTHSCHILD: I ll save my questions for cross.
2 Thank you.

3 THE COURT: I think that s what you have to do. If
4 it doesn t exist, it doesn t exist. You may proceed.

5 BY MR. GILLEN:

6 Q Mike, again, is this draft here a document that you
7 generated in response or as a result of the process of
8 discussion with the teachers you ve described?

9 A Right, that Bate stamped 29 --

10 Q Yes.

11 A -- is the teachers recommendation.

12 Q Okay. And let me ask you, based on your
13 discussions with them, what was your understanding of the
14 basis for this recommendation?

15 A That if there was going to be language that was
16 going to be board approved and changed, that the teachers
17 recommended that this be the language that the board adopt.

18 Q Let s look at defendants exhibit 44. Do you
19 recognize this?

20 A Yes.

21 Q And what is it?

22 A September 21st, 2004.

23 Q Okay, and who is it directed to?

24 A The board of directors.

25 Q Okay. And let me ask you, Mike, are you generating

1 these documents in your capacity as the assistant
2 superintendent?

3 A Yes.

4 Q And what is your purpose in generating them?

5 A To try to come to some agreement between language
6 that the board would like to see included in and language
7 that the teachers would agree to.

8 Q Okay. And 44 is directed to whom?

9 A The school board, all the school board members.

10 Q Okay. And what was the purpose in doing that?

11 A So that they could see -- well, this is what came
12 out of the August meeting. I was working with the teachers
13 to develop language and then send it on to the full board
14 for their review.

15 Q All right. Did there come a time when you received
16 some input from board members?

17 A Yes.

18 Q And I would ask you to look at defendants exhibit
19 45.

20 A Okay.

21 Q Do you recognize this document?

22 A Yes.

23 Q What is it?

24 A This is a note from Casey Brown that has two
25 suggestions of language that could be included that s

1 different from the teachers.

2 Q And in terms of trying to build consensus, did you
3 see this document as representing any progress? Did you
4 notice points of convergence?

5 A Well, there were some -- there were some points
6 that were the same, you know, making students aware of gaps.
7 There were two problems I saw with this document is they
8 talked about origins of life in both of Mrs. Brown's
9 suggestions, and the teachers weren't teaching origins of
10 life, so I didn't think that would be acceptable to them.

11 Q Tell us what happened next in terms of this
12 proposed curriculum change that's being talked about?

13 A I did get feedback from Bill Buckingham on what
14 language he thought should be included in that, and then
15 also Dr. Nilsen gave me some language from Mr. Bonsell to
16 include in there.

17 Q Did you take notes as a result of your conversation
18 with Mr. Buckingham?

19 A Yes.

20 MR. GILLEN: Let me see, I think I have those.

21 BY MR. GILLEN:

22 Q I ask you to look at defendant's exhibit 31 at the
23 page Bate stamped 59.

24 A Okay.

25 Q Do you recognize that document?

1 A Yes, these are notes that I took after speaking
2 with Mr. Buckingham.

3 Q And looking at the notes, can you recall what
4 Mr. Buckingham said to you?

5 A Again, he s still talking about using *Of Pandas and*
6 *People* side by side with Miller-Levine. The next note is
7 that he s okay with mentioning intelligent design. That was
8 the draft that was produced by Dr. Nilsen at the August
9 meeting with the teachers. And then the last note is that
10 he felt those that donated to purchase the books, that their
11 expectation is that we would use these books in an
12 instructional manner.

13 Q Did you -- you ve mentioned receiving information
14 from Rich Nilsen concerning Allen Bonsell s input. Can you
15 tell us what you recall about that?

16 A Mr. Bonsell just wanted next to gaps, slash,
17 problems added, so he was adding the word "problems" to that
18 statement.

19 Q What happened next in this process relating to the
20 curriculum change?

21 A Well, I didn t have consensus of what -- I had the
22 teachers version what they wanted, but I didn t have any
23 agreement from the board curriculum committee, or the full
24 board on the language. So I called the board curriculum
25 committee together so that they could try to come to some

1 consensus on the curriculum language.

2 Q And with that in mind, I would ask you to look at
3 defendants exhibit 46.

4 A Okay.

5 Q Do you recognize that document?

6 A Yes.

7 Q What is it?

8 A It s a memo to the board curriculum committee about
9 a meeting on October 7th to discuss the curriculum
10 language.

11 Q And do you have reason to believe that meeting
12 occurred?

13 A Yes.

14 Q And I d ask you to look at exhibit 50.

15 A Okay.

16 Q Do you have that, Rich?

17 A Yes.

18 Q Mike, I m sorry.

19 There s two pages to this document. I want you to
20 look at each of them separately. The first page of
21 defendants exhibit 50 has the Bate stamp number 35 in the
22 lower right-hand corner. Tell us what that is.

23 A I prepared this document for the meeting. It has
24 the various drafts of language from the administration and
25 the staff, from the school board members, and I simply

1 listed the concerns that had been communicated to me from
2 the board that the language should address.

3 Q Okay. And is this your understanding of the
4 various positions of the parties at this time?

5 A Yes.

6 Q And under "concerns to be addressed," is this your
7 understanding of the concerns that you needed to address in
8 order to build a consensus?

9 A Yes.

10 Q Well, let s look at the portion of exhibit 50 which
11 has the Bate stamp number 36 in the lower right-hand corner.

12 A Okay.

13 Q Do you recognize that document?

14 A Yes.

15 Q What is it?

16 A This is the -- my notes on what the agreement was
17 with the board curriculum committee on what language we
18 should include.

19 Q Okay. And what did you understand the board
20 curriculum committee s position to be?

21 A That they were adding language to include the
22 mention of intelligent design.

23 Q And I see it s a handwritten note. Was it worked
24 out during this meeting?

25 A Yes.

1 Q And do you recall any specific discussion at the
2 meeting?

3 A It was a short meeting. Really, I just remember
4 Mr. Buckingham wanting intelligent design in there. And so
5 we took -- I don't remember Mrs. Harkins suggesting any
6 additional language. So really what happened is, we simply
7 married Mr. Buckingham's language with Mr. Bonsell's.

8 Q There's, under the "concerns to be addressed" there
9 is an item four. I want to ask you, did you know why that
10 item was there?

11 A Because we were still wrestling with how we were
12 going to use *Of Pandas and People* -- oh, while that wasn't
13 decided, but earlier on when *Of Pandas and People* came up
14 and us thinking about how we might use it, Dr. Nilsen asked
15 me to check in the curriculum guides for areas that we might
16 reference materials. In other words, Dr. Nilsen suggested
17 that if we do use *Of Pandas and People*, that it be
18 referenced so that it would be a board approved book in the
19 curriculum so that teachers --

20 MR. ROTHSCHILD: Objection, Your Honor, this answer
21 is hearsay, move to strike.

22 MR. GILLEN: He's just -- Judge, how can he testify
23 except what he's doing and why. That's his -- he's
24 generating these documents as assistant superintendent.
25 He's trying to explain why.

1 THE COURT: Using that excuse, hearsay would always
2 come in.

3 MR. GILLEN: Well --

4 THE COURT: You ve got to do a little better.

5 MR. GILLEN: Well, no.

6 THE COURT: He s repeating what Dr. Nilsen said --

7 MR. GILLEN: Well --

8 THE COURT: -- that looks like hearsay to me.

9 MR. GILLEN: Let me ask it a different way.

10 THE COURT: So I ll sustain the objection. I ll
11 strike the passages that represent direct quotes from
12 Dr. Nilsen because they appear to be hearsay.

13 BY MR. GILLEN:

14 Q Did -- Mike --

15 THE COURT: Any time you want to complete this line
16 of questioning consistent with our agreement to finish up,
17 however, or if you see a point where you want to break,
18 Mr. Gillen.

19 MR. GILLEN: I ll wrap it up here. Thank you, Your
20 Honor.

21 BY MR. GILLEN:

22 Q Mike, just looking at this item four under
23 "concerns to be addressed," did you do anything in your
24 capacity as assistant superintendent related to this item?

25 A I put *Of Pandas and People* later in a draft in the

1 reference.

2 Q And why did you do that?

3 A So that teachers would be protected because they
4 would have a board approved book so there s no liability
5 there for teachers if anybody challenged it or objected to
6 it.

7 MR. GILLEN: That is a good breaking point, Your
8 Honor.

9 THE COURT: All right. Then we will call an end to
10 the proceedings for this week.

11 Mr. Rothschild, do you have something you want to
12 say before we go?

13 MR. ROTHSCHILD: I just want to clarify witness
14 order. I understand that there s a witness coming from out
15 of town, he ll start on Monday, and I am assuming Mr. Baksa
16 will continue after that?

17 MR. GILLEN: Actually, I think I ll put on
18 Mr. Bonsell and get him through, so we ll have another board
19 member done.

20 THE COURT: Starting first thing Monday?

21 MR. GILLEN: Mrs. Cleaver is coming from Florida,
22 she ll go on first. Then I ll put on Mr. Bonsell, and I
23 think he ll take a good part of the day, probably the whole
24 day. If there is more time for Mike, I ll put him on
25 towards the end.

1 MR. ROTHSCHILD: I guess -- it just seems like it s
2 getting broken up more than is necessary to accommodate
3 witnesses, but I ll leave that to your discretion, Your
4 Honor.

5 THE COURT: Well, it s his case, and we ve all
6 tried to work collaboratively to do it that way. Poor
7 Mr. Baksa has his testimony broken up in at least three
8 pieces and now --

9 MR. ROTHSCHILD: I ll do my cross straight.

10 THE COURT: Yeah, probably --

11 MR. GILLEN: Could I break up his cross?

12 THE COURT: There s probably not going to be any
13 time for that, but so it goes.

14 All right. Then we ll start with another witness,
15 a separate witness, not with Mr. Baksa, and we ll return to
16 Mr. Baksa at a point probably after Monday, to answer your
17 question, is what it appears to me.

18 MR. GILLEN: That s my guess.

19 THE COURT: All right, I wish you all a pleasant
20 weekend. I will see you Monday. We ll resume the trial on
21 Monday at 9 a.m. Our trial days next week, just to revisit
22 this, so we re all on the same page, will be Monday,
23 Wednesday, Thursday and Friday.

24 All right, we ll be in recess until Monday.

25 THE DEPUTY CLERK: All rise.

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(4:20 p.m., court adjourned.)

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REPORTER S CERTIFICATE

I, Joan D. Spearing, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

s/Joan D. Spearing
Joan D. Spearing, RMR
Official Court Reporter

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