

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
3 HARRISBURG DIVISION

3 TAMMY KITZMILLER, et al., : CASE NO.
4 Plaintiffs : 4:04-CV-02688
5 vs. :
6 DOVER SCHOOL DISTRICT, : Harrisburg, PA
7 Defendant : 31 October 2005
8: 9:00 a.m.

9
10 TRANSCRIPT OF CIVIL BENCH TRIAL PROCEEDINGS
11 TRIAL DAY 18, MORNING SESSION
12 BEFORE THE HONORABLE JOHN E. JONES, III
13 UNITED STATES DISTRICT JUDGE

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I N D E X
Kitzmiller vs. Dover Schools
4:04-CV-2688
Trial Day 18, Morning Session
31 October 2005

PROCEEDINGS

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning
3 to all. And we continue the defendant's case, I
4 believe, Mr. Gillen?

5 MR. GILLEN: Thank you, Your Honor. The
6 defense has called Jane Cleaver.

7 (Jane Cleaver was called to testify and was
8 sworn by the courtroom deputy.)

9 THE COURT: You may proceed.

10 COURTROOM DEPUTY: Please state your full
11 name and spell your name for the record.

12 THE WITNESS: My name is Jane cleaver.
13 J-A-N-E. C-L-E-A-V-E-R.

14 DIRECT EXAMINATION BY MR. GILLEN:

1 15 Q. Good morning, Jane.

16 A. Good morning.

2 17 Q. As you know, I've asked you to come here
18 and give testimony in this case, and it's
19 customary to introduce yourself a little to
20 the jury. Can you hear me?

21 A. I'm having a little problem.

3 22 Q. Okay, I'm sorry. This is, it's customary
23 to give a little introduction as to who you are
24 appearing here to testify before the court, and
25 so I want to ask you first of all, do you live

1 in Dover now, Jane?

2 A. No, sir.

4 3 Q. But did you?

4 A. Yes, sir.

5 5 Q. And for how long did you live in Dover?

6 A. For 56 years.

6 7 Q. And are you married currently?

8 A. I'm widowed.

7 9 Q. Were you married?

10 A. Yes, sir.

8 11 Q. Did you have children?

12 A. Two children.

9 13 Q. Do you have grandchildren?

14 A. Four grandchildren.

10 15 Q. Do you have great-grandchildren?

16 A. Four great-grandchildren.

11 17 Q. Give us a sense of your educational
18 background, Jane. What was your education?

19 A. My education was two weeks in the ninth
20 grade at Dover High School.

12 21 Q. Just give us an idea of why you cut off
22 then.

23 A. Well, at that time that was back in the
24 30's, there really weren't school buses to take
25 us, take children to the school, and I was from

1 a large family, and if there would have been
2 buses my parents couldn't have afforded that.
3 For two weeks I walked back and forth to school
4 about two and a half miles every day, and I
5 would have loved to have, to graduate, but it
6 was impossible.

13 7 Q. Okay. Well, nonetheless did you work while
8 you were in Dover?

9 A. Yes, sir.

14 10 Q. And what did you do?

11 A. I operated several businesses and rented
12 houses, and I just loved our community and the
13 people in our community. It was just an honor
14 for me to be in that community.

15 15 Q. All right. Well, give us a sense of your
16 business endeavors. What businesses did you run
17 while you were in Dover?

18 A. I ran and operated the Dover Department
19 Store and two other department stores.

16 20 Q. Okay.

21 A. And rented homes there.

17 22 Q. How about the five and ten? I've heard you
23 ran the five and ten.

24 A. It was originally called a five and ten,
25 and then later changed to the Dover Department

1 Store.

18 2 Q. Okay, and has your lack of formal education
3 hampered you in life or have you done pretty
4 well?

5 A. Not at all, sir. I've done very well.

19 6 Q. All right. Now, there was a time when you
7 were on the Dover area school district board, is
8 that correct?

9 A. Pardon me, sir?

20 10 Q. That's all right. There was a time when
11 you joined the Dover area school district school
12 board?

13 A. Yes, sir.

21 14 Q. And about when was that?

15 A. That was about June or July of 2002.

22 16 Q. Okay. Were you elected or appointed?

17 A. Appointed.

23 18 Q. And who appointed you?

19 A. The board.

24 20 Q. Do you know why there was need for the
21 board to appoint you?

22 A. Because there were two resignations.

25 23 Q. Do you know who resigned?

24 A. Mr. Snook and Mr. Langioni.

26 25 Q. Why did you apply to fill one of those

1 vacancies?

2 A. Well, sir, I attended many board meetings
3 before I ever applied for this position, and I
4 observed what was being said by Mr. Snook and by
5 Mr. Langioni and all the other board members as
6 far as that.

27 7 Q. You said you observed what was said. Was
8 there a big issue in the community at this time
9 related to the schools?

10 A. Yes, sir.

28 11 Q. Tell us what that was.

12 A. The issue was the building project was in,
13 was looming large, and I had great concerns and
14 questions about how the old board was handling
15 this project. And so I was, I had concerns if
16 they were handling it in a responsible manner.

29 17 Q. Well, was there anything about your
18 personal background that made you think you
19 could add value to the process?

20 A. Yes, sir.

30 21 Q. Tell us what it was.

22 A. My personal background being in business
23 for 33 and a half years, I thought maybe that
24 I could contribute something to this project.

31 25 Q. Okay. You've mentioned that in the period

1 prior to your joining the board there was
2 discussion of the building project. Did you
3 observe Mr. Snook and Mr. Langioni discussing
4 the building project?

5 A. Yes, sir.

32 6 Q. And did you arrive at an opinion concerning
7 how they were conducting themselves? Were they
8 serving the community?

9 A. Yes, sir.

33 10 Q. And what did you think?

11 A. Neither Mr. Snook nor Mr. Langioni made a
12 good impression as far as my concerns, not to
13 me.

34 14 Q. And did that opinion you formed sort of
15 influence the way you viewed them later when
16 they came to board meetings?

17 A. Yes.

35 18 Q. And in what way, what was your thought?

19 A. Well, I could not, I did not put no value
20 in their opinions or in their judgment. They
21 did not use good judgment.

36 22 Q. Well, let me ask you this. When you were
23 appointed to the board, were you approved
24 unanimously?

25 A. No, sir.

37 1 Q. Do you recall who voted against you?

2 A. Ms. Callahan.

38 3 Q. Did she ever tell you why?

4 A. No, sir.

39 5 Q. Okay. If you're looking at the board and
6 their attitude towards the building project, you
7 mentioned Mr. Snook and Mr. Langioni. Did you
8 see Mrs. Callahan as agreeing with them or
9 differing with them on the building project?

10 A. She agreed with Mr. Snook and Mr. Langioni.

40 11 Q. Did that affect your relationship with her
12 on the board?

13 A. Yes.

41 14 Q. And tell us how.

15 A. Truthfully again I can put no value on her
16 opinions or her comments.

42 17 Q. Well, what's your point there? Where do
18 you differ in judgment?

19 A. They really didn't care of how much money
20 they were spending and how much it was really
21 costing the taxpayers.

43 22 Q. All right. Let's look at your involvement,
23 if any, with the Dover area school district
24 prior to coming to the board. Were you involved
25 with the schools prior to being appointed to the

1 board?

2 A. Yes, sir.

44 3 Q. Well, tell us how you were involved with
4 the schools.

5 A. Well, first after 9/11 I heard President
6 Bush speak on the television one evening and
7 ask that our American children would take one
8 dollar out of their piggy bank and send it to
9 the Iraqi children, the children in Iraq. So
10 I went to each of our schools and approached our
11 principals and asked if they would make this a
12 school project, in which they agreed, and quite
13 a bit of money was collected and sent to our
14 president.

45 15 Q. All right. That's one project. Was there
16 another?

17 A. Yes, sir.

46 18 Q. Tell us about that.

19 A. Well, I felt after 9/11 I felt that our
20 nation needed to get back to the basics. When
21 I was a kid and went to school we had, we said
22 prayer every morning, and I felt it started our
23 day off very nicely. But I realized in this day
24 and age prayer would be unlawful, would be
25 against the law to be, to be said in the schools

1 today, but I had heard that a moment of silence
2 would be allowed. So I encouraged that.

47 3 Q. Did anything happen as a result of these
4 efforts on your part?

5 A. Yes, sir.

48 6 Q. Tell us what happened.

7 A. The Dover schools adopted a policy allowing
8 a moment of silence to begin each day.

49 9 Q. Now, you've mentioned coming to the board.
10 Were you appointed to any committees when you
11 came to the board?

12 A. Yes, sir.

50 13 Q. Tell us what they were.

14 A. Community education and policy.

51 15 Q. Okay. You mentioned, let's talk about the
16 policy committee. Did you do a lot of work
17 while you were on the policy committee?

18 A. Not really.

52 19 Q. And why was that?

20 A. Because Casey Brown was head of the policy
21 committee, and she did mostly whatever she
22 wanted to and had no consideration for what
23 the rest of us thought.

53 24 Q. Well, does the policy committee deal with
25 curriculum?

1 A. No, sir.

54 2 Q. What about community ed? What does that
3 community deal with?

4 A. Community ed is mostly for the adults to
5 take bus trips and activities that the adults
6 are involved in.

55 7 Q. Okay. Did you do a lot of work on that
8 community while you were on the school district?

9 A. There was not too much work involved in
10 that, sir.

56 11 Q. Okay. All right, let's look at the period
12 from when you first joined the board up until
13 January of 2004. Do you recall any discussion
14 of the biology text or biology curriculum during
15 that period from when you first joined the board
16 up until 2004?

17 A. No, sir.

57 18 Q. How about let's look at 2004, from January
19 through the end of May 2004. Do you remember
20 any discussion of the biology text or biology
21 curriculum during that period?

22 A. Not that I recall, sir.

58 23 Q. Okay. Well, that brings us to June, and
24 I want to ask you do you remember school board
25 meetings during the June period?

1 A. Yes.

59 2 Q. Do you have a specific recollection of two
3 different meetings, or do they blur together?

4 A. Truthfully those two meetings are kind of a
5 blur. They run together. I couldn't really
6 separate the two.

60 7 Q. Well, I understand. Let me ask you this,
8 during this June 2004 period do you recall any
9 mention of intelligent design?

10 A. Yes, sir.

61 11 Q. Do you recall anything specific?

12 A. No, sir.

62 13 Q. Did you ask any questions about it during
14 this period?

15 A. No, sir.

63 16 Q. Do you remember anything else that was said
17 during these board meetings in June? Do you
18 remember any discussion of the biology text?

19 A. No, sir.

64 20 Q. How about do you recall issues about
21 whether the texts would to be purchased
22 or a newer text would be purchased?

23 A. Yes.

65 24 Q. Well, do you recall Bert Spahr addressing
25 the biology textbook?

1 A. Yes, sir.

66 2 Q. All right. Tell us what you recall Bert
3 saying.

4 A. I recall Ms. Spahr wanted a new biology
5 book. They were not satisfied with the book
6 they had. She wanted a new one. But at that
7 time we, the book was, we were going to buy this
8 book for the school, we found out that there was
9 a new edition, a later edition coming out. So I
10 think that our approval was put on hold at that
11 time.

67 12 Q. Okay. How about Charlotte Buckingham.
13 She's been mentioned here during these
14 proceedings as speaking at a board meeting.
15 Do you remember Charlotte Buckingham speaking?

16 A. Yes, sir.

68 17 Q. Tell us what you recall about that.

18 A. I remember Ms. Buckingham quoting the Book
19 of Genesis and mentioning creationism.

69 20 Q. And sitting as a board member, what was
21 your reaction to Charlotte's comments?

22 A. Truthfully I felt that this was the wrong
23 time and the wrong place.

70 24 Q. And what do you mean by that?

25 A. Well, I share in Ms. Buckingham's faith,

1 but I do not want religion taught in our
2 schools. There's a time and a place for that.

71 3 Q. Okay. Did you know Charlotte Buckingham?

4 A. I knew Charlotte Buckingham.

72 5 Q. Were you friends with her?

6 A. Yes, I became friends with Charlotte back
7 when I was trying to, when I was in the process
8 of getting a moment of silence into our schools.
9 She was a secretary at one of the churches, and
10 that's where I first met her.

73 11 Q. You say you didn't want religion taught in
12 the public schools. How about creationism?

13 A. No, sir, I don't want creationism taught
14 the schools.

74 15 Q. Well, and explain why not.

16 A. Because I think creationism should be
17 taught in churches and in the homes, but not
18 in schools.

75 19 Q. At the time that Charlotte Buckingham
20 addressed the board, did you believe that any
21 member was considering a policy that would
22 require the teaching of creationism in Dover
23 schools?

24 A. No, sir.

76 25 Q. While you've been on the board has the

1 Dover area school district ever sought to
2 require the teaching of creationism?

3 A. Not that I recall, sir.

77 4 Q. Well, how about intelligent design? When
5 you heard that term mentioned, did you think
6 that was creationism?

7 A. No, sir.

78 8 Q. And why is that?

9 A. Because I heard a lot of talk about
10 intelligent design, and as far as intelligent
11 design I don't think there's ever anything
12 that's mentioned about creationism, not that
13 I know of.

79 14 Q. Did you read the paper during the June,
15 July 2004 period, Jane?

16 A. No, sir.

80 17 Q. And why was that?

18 A. Because I didn't get it.

81 19 Q. And why didn't you get it?

20 A. Because of the reporter Joe.

82 21 Q. Well, explain that.

22 A. Well, when I got on the board and Joe would
23 come to me, whatever I told Joe, Joe put the
24 opposite in the paper. Joe doesn't know how to
25 tell the truth. He only knows how to tell a

1 lie.

83 2 Q. Did you ever speak to Joe -- is this Joe
3 Maldonado? Is it Joe Maldonado you're referring
4 to?

5 A. Yes, sir.

84 6 Q. Did you ever speak to Joe and voice
7 objection?

8 A. Yes, I did.

85 9 Q. And did Joe's reporting change in your
10 opinion as a result?

11 A. No, sir.

86 12 Q. How about Mrs. Bubb? Did you speak with
13 her?

14 A. No, sir.

87 15 Q. And why was that?

16 A. Because Ms. Bubb and Joe sat together at
17 the meetings and shared notes, and I was afraid
18 that whatever I told Ms. Bubb she would share
19 with Joe, and I did not trust Joe.

88 20 Q. Just in your opinion how about the
21 reporting by Ms. Bubb? Was that more accurate,
22 or did you have problems with that?

23 A. About ditto. About ditto with Joe.

89 24 Q. Would you explain that again, Jane? I
25 didn't quite get you.

1 A. Well, as Ms. Bubb's reporting was about the
2 same as what Joe's was, so I didn't want any of
3 the reporters close to me. In fact, I told Joe
4 to stay away from me, don't get near me, you
5 don't know how to tell the truth. You only know
6 how the tell the untruth.

90 7 Q. Let me ask you this. This is the July 2004
8 period, were there any developments in your
9 personal life that would affect your
10 participation on the Dover area school district
11 school board?

12 A. Yes, sir.

91 13 Q. Tell us about those.

14 A. I had decided to move to Florida, and I
15 bought my home July 21st in Florida. And I
16 lived in Florida until August the 2nd -- or
17 August the 11th, pardon me, and I came home to
18 Pennsylvania to avoid the Hurricane Charlie.

92 19 Q. Is that why you remember the dates so well,
20 Jane?

21 A. Very well.

93 22 Q. Go ahead.

23 A. Charlie hit on August the 13th. And after
24 I heard about the damage that Charlie had done
25 to my home, I returned to Florida August the

1 15th and then I did not return to Dover until
2 October the 2nd.

94 3 Q. Okay. You say you returned in October.
4 I just want to be sure, did you attend any board
5 meetings in August of 2004?

6 A. No, sir.

95 7 Q. How about September of 2004?

8 A. No, sir.

96 9 Q. When you returned to Dover were you
10 prepared to attend the board meetings in
11 October of 2004?

12 A. Pardon me, sir?

97 13 Q. When you returned in October did you attend
14 board meetings there?

15 A. Yes, sir.

98 16 Q. Did there come a time when the textbook Of
17 Pandas came to your attention?

18 A. Yes, sir.

99 19 Q. How did that text come to your attention?

20 A. When I returned to Dover October the 2nd I
21 called my sister-in-law to tell her I was home
22 and to chat with her, and she said to me there's
23 a big controversy about Dover, a book called
24 Pandas and People, and she doesn't know what
25 it's all about, but the paper has been stating

1 that Dover schools are going to be teaching
2 creationism.

100 3 Q. Well, let me ask you, prior to that time
4 had you ever heard of the text Of Pandas?

5 A. No, sir.

101 6 Q. Did you go to the board meeting on October
7 4th?

8 A. Yes, sir.

102 9 Q. And did the book come to your attention in
10 connection with that meeting?

11 A. It was on the agenda, sir.

103 12 Q. Did you do anything when you saw it on
13 the agenda?

14 A. Yes, sir.

104 15 Q. Tell us what you did.

16 A. I asked Mr. Buckingham.

105 17 Q. You asked him for what?

18 A. About the book Of Pandas.

106 19 Q. And?

20 A. And he stated that it spoke about
21 intelligent design, and Mr. Buckingham thought
22 that, or his feelings were that our students,
23 this book should be available so that our
24 students could refer to it.

107 25 Q. Well, you were on the school board. Did

1 you do anything yourself as a result of what
2 Mr. Buckingham told you?

3 A. Yes, sir.

108 4 Q. Tell us what you did.

5 A. I asked Mr. Buckingham for a copy of that
6 book.

109 7 Q. And did you read it?

8 A. I read parts of it. Most of it.

110 9 Q. Based on what you read did you think
10 intelligent design was creationism?

11 A. No, sir.

111 12 Q. And again why is that, Jane?

13 A. Because in the book Of Pandas and People
14 there is no mention of the Bible or of God or
15 creationism.

112 16 Q. Well, if the book wasn't about creationism,
17 what did you think the book was about?

18 A. I think this book is just another theory,
19 intelligent design to me is just another
20 scientific text or another theory.

113 21 Q. Now, did there come a time when a proposed
22 change to the biology curriculum came to your
23 attention?

24 A. Yes, sir.

114 25 Q. And when was that?

1 A. I think that was October the 18th.

115 2 Q. Okay. That would be the second board
3 meeting in October? Is that the meeting
4 you're thinking of?

5 A. Yes.

116 6 Q. Okay, and when did it come to your
7 attention, Jane?

8 A. I think if I can recall, that may have been
9 the first meeting that there was going to be a
10 change in October, and then I think the 18th is
11 when we voted on it.

117 12 Q. Okay. Let's look at that 18th and try and
13 fix your mind again on the public comments. Do
14 you remember anything in terms of public comment
15 at that meeting?

16 A. Yes, sir.

118 17 Q. Tell us what you remember.

18 A. I remember again Ms. Spahr getting up, and
19 her comments were that they did not want to
20 teach intelligent design because she felt
21 intelligent design was creationism.

119 22 Q. Well, what was your reaction to that
23 statement?

24 A. I disagreed.

120 25 Q. And why was that, Jane?

1 A. Well, because they were at that time Alan
2 Bonsell was president of the board, and Alan
3 Bonsell and Dr. Nilsen had also stated that the
4 teachers would not be made to teach intelligent
5 design.

121 6 Q. Do you remember any other public comment
7 during this meeting?

8 A. Yes, sir.

122 9 Q. Tell us what you remember.

10 A. I remember Noel Renwich --

123 11 Q. Okay.

12 A. -- making some amendments about this policy
13 in quite a few amendments, but to me it did not
14 make a point to me.

124 15 Q. What do you mean by that, Jane?

16 A. Well, it made no sense to me. I felt that
17 it was not the right time and place for this.

125 18 Q. Do you remember any board members saying
19 anything when the voting started and these
20 motions were made?

21 A. There were other members, there were other
22 people that made, that talked about this, but I
23 don't really know who they were.

126 24 Q. Okay. Did you vote for the curriculum
25 change?

1 A. Yes, sir.

127 2 Q. And why did you do so? What information
3 were you relying on?

4 A. Well, sir, I felt that there's our
5 children, our students should be made aware
6 of other theories that are out there in biology.

128 7 Q. Well, let me ask you, did you understand
8 that the curriculum change would require the
9 teachers to teach intelligent design?

10 A. The teachers were not -- give me that again
11 sir, please.

129 12 Q. Certainly. Did you think that the
13 curriculum change would require teaches to
14 teach intelligent design?

15 A. No, sir.

130 16 Q. And again why is that, Jane? What put hat
17 idea in your mind when you voted?

18 A. Because at the time Alan Bonsell was
19 president, and they were told definitely
20 they did not have to teach creationism or
21 intelligent design.

131 22 Q. Prior to this meeting had you had any
23 discussion with board members about the
24 curriculum change?

25 A. No, sir.

132 1 Q. So what you heard at the meeting was really
2 all you were relying on?

3 A. Yes, sir.

133 4 Q. When you voted for the curriculum change,
5 Jane, did you believe it would result in making
6 students aware of creationism or something
7 different?

8 A. No, sir.

134 9 Q. And why was that?

10 A. I voted in favor of the change because I
11 wanted to, I wanted our students just to be
12 made aware of other theories that are out there,
13 and I thought it would be good for education.

135 14 Q. When you voted for the curriculum change
15 did you think intelligent design was religious?

16 A. No, sir.

136 17 Q. What did you think intelligent design was?

18 A. To me intelligent design is just another
19 scientific text or another theory.

137 20 Q. Okay. And for that -- well, let me ask
21 you, did you vote for the curriculum change for
22 religious reasons, Jane?

23 A. No, sir.

138 24 Q. Again just explain what's your purpose in
25 voting for it then.

1 A. Because again the purpose for me voting for
2 a change is because I felt that there are to be
3 more than one theory that these students should
4 be made aware of. There are so many theories
5 out there, but the student does not have to be
6 taught but that the student be made aware, and
7 I think it makes for a better education.

8 MR. GILLEN: I have no further questions,
9 Your Honor.

10 THE COURT: Thank you, Mr. Gillen. Cross
11 examination by Mr. Schmidt?

12 CROSS EXAMINATION BY MR. SCHMIDT:

139 13 Q. Good morning, Mrs. Cleaver. Can you hear
14 me all right?

15 A. I can hear you.

140 16 Q. I understand you've come back from Florida
17 to be with us today, is that right?

18 A. Yes, sir.

141 19 Q. I hope one of your former colleagues was
20 good enough to put you up.

21 A. I'm staying with my daughter.

142 22 Q. Good. When did you sell your home in
23 Dover?

24 A. I didn't sell my home.

143 25 Q. How often do you come back?

- 1 A. How often do I come back?
- 144 2 Q. To the Dover area.
- 3 A. About twice a year.
- 145 4 Q. You purchased your house in Florida in July
5 of 2004, is that right?
- 6 A. Yes, sir.
- 146 7 Q. Just to be clear about the dates, you spent
8 July after the closing and most of August except
9 for the hurricane, and all of September in
10 Florida?
- 11 A. I came home August the 11th to get away
12 from Hurricane Charlie, and went back August
13 the 15th.
- 147 14 Q. And then returned I think you said on
15 October 2nd?
- 16 A. Correct.
- 148 17 Q. Okay. Let me ask you a little bit about
18 your service on the Dover board. You told us
19 this morning that you obtained an appointment to
20 the board in the summer of 2002, is that right?
- 21 A. Yes, sir.
- 149 22 Q. Isn't it true that there were other
23 candidates that were being considered by
24 the board for appointment at that time?
- 25 A. Yes, sir.

150 1 Q. Wasn't one of the candidates who was
2 appointed Mr. Buckingham?

3 A. Yes, sir.

151 4 Q. And wasn't there a candidate who was a
5 fellow with an engineering degree who was also
6 interested like you were in the construction
7 issue?

8 A. I don't know what his background was, sir.

152 9 Q. Okay, but there was another candidate who
10 was interested --

11 A. Yes, there was another candidate.

153 12 Q. Also interested in the school issue, is
13 that right?

14 A. Yes, sir.

154 15 Q. And he was an engineer, wasn't he?

16 A. I have no idea.

155 17 Q. Isn't it true that during the summer of
18 2002 Mr. and Mrs. Brown approached you several
19 times to try to persuade you to join the Dover
20 area school board?

21 A. Yes, sir.

156 22 Q. Made a couple of visits to your house?

23 A. Yes, sir.

157 24 Q. You didn't agree with them when they first
25 approached you about joining the board, did you?

1 A. On many opinions I did not agree.

158 2 Q. Well, I'm just asking about one, they
3 wanted you to join the board, and you didn't
4 agree when Jeff and Casey Brown approached you
5 about joining the board in the summer of 2002,
6 isn't that right?

7 A. Yes.

159 8 Q. Now, later on in that time period Alan
9 Bonsell approached you and asked you to join
10 the board, isn't that right?

11 A. He did not ask me.

160 12 Q. Did he try to persuade you?

13 A. Sir, I've known Alan Bonsell since he was a
14 child, and his parents, and one evening Allen
15 Bonsell had called me, not concerning the school
16 board, about something, but we did get into the
17 conversation of the school board, and up until
18 that time when the Browns approached me I could
19 not give them an answer. I just did not. I
20 attended all those board meetings, but I could
21 not give them an answer, but it was like a light
22 bulb went off in my head and I said to Alan yes,
23 I'm going to apply, Alan.

161 24 Q. Okay.

25 A. That's when I gave my answer to Alan.

162 1 Q. He told you he was pleased, didn't he?

2 A. And he was pleased.

163 3 Q. You've known him as you said since he was a
4 little boy?

5 A. Yes, sir.

164 6 Q. And you have a very high regard for him,
7 don't you?

8 A. Yes, sir.

165 9 Q. You think he's a clear thinking person?

10 A. I have the deepest respect for Alan.

166 11 Q. And you would tend to accept his judgment
12 about things, isn't that right, Mrs. Cleaver?

13 A. Yes, sir.

167 14 Q. And I think it's fair to say you were
15 guided in your work on the school board often
16 by what Mr. Bonsell had to say or the positions
17 that he took, isn't that right?

18 A. Let me say this to you, sir. I'm an
19 independent person, and I'm not a rubber stamp
20 for anyone, and I respect Alan Bonsell very,
21 very much. I still have my own opinion.

168 22 Q. You told me a minute ago that
23 Mr. Buckingham was the other person who was
24 appointed there in mid 2002, is that right?

25 A. Yes, sir.

169 1 Q. And you had met Mr. Buckingham's wife
2 earlier in that year, is that right?

3 A. Yes, sir.

170 4 Q. I think you answered a question or two by
5 Mr. Gillen about a project you undertook
6 involving having the board approve a moment
7 of silence before school every morning.

8 A. Yes, sir.

171 9 Q. And I think that the other part of that
10 project was to have the Pledge of Allegiance
11 said in the Dover school district?

12 A. Yes, sir.

172 13 Q. I think as part of your effort in that
14 project you went from church to church in the
15 Dover area, is that right?

16 A. Yes, sir.

173 17 Q. And I think it was in one of those visits
18 to a church that you met Mrs. Buckingham, who
19 was a financial secretary I think for the
20 Harmony Grove Church, is that right?

21 A. Yes, sir.

174 22 Q. And you told her what you were up to, and
23 she came out to the board meeting in February of
24 2002 to support your effort, isn't that right?

25 A. Yes, sir.

175 1 Q. I think you said, at least my notes
2 indicates that you thought something was
3 lost when prayer stopped being said in school,
4 isn't that right?

5 A. That was my opinion, sir, because as I was
6 growing up as a kid we had prayer, and I felt
7 that when prayer was taken out of school there
8 was something lost. But that was only my
9 opinion.

176 10 Q. Well, isn't that an opinion that you shared
11 with Mr. Buckingham and Alan Bonsell and Heather
12 Geesey as far as you know?

13 A. Not as far as getting prayer back into
14 school.

177 15 Q. Well, let me be clear about my question.
16 My question was only isn't it your understanding
17 that Mr. Buckingham and Mr. Bonsell and Heather
18 Geesey, who was also on the school board, shared
19 your view that something valuable was lost when
20 prayer was taken out of the school?

21 A. Yes.

178 22 Q. Now, you said you were appointed in the
23 summer of 2002. You then ran for election,
24 didn't you?

25 A. Yes, sir.

179 1 Q. You ran in the fall of 2003 and you were
2 elected and took your seat as an elected member
3 in December of 2003, is that right?

4 A. Yes, sir.

180 5 Q. I think you expressed yourself very
6 vigorously about your views of Mr. Maldonado,
7 but let me ask you a few questions about your
8 approach to learning what's happening at the
9 school. Isn't it true that when you got on the
10 school board you stopped taking the local paper?

11 A. After a few weeks of being on the school
12 board I did stop getting the paper.

181 13 Q. Okay. And you stopped reading the paper?

14 A. Absolutely.

182 15 Q. But you didn't lack for information about
16 goings on in the Dover community, did you?
17 You were able to find out what was going on?

18 A. Yes, sir.

183 19 Q. And what was being discussed in the Dover
20 community, is that right?

21 A. Yes.

184 22 Q. But you had not only your own social and
23 business life, but you would attend borough
24 meetings and township meetings, isn't that
25 right?

1 A. Yes.

185 2 Q. So you had a pretty good sense of what
3 was under discussion --

4 A. Yes.

186 5 Q. -- in Dover all the time you were on the
6 board, right?

7 A. Yes.

187 8 Q. I have another question about how you
9 collected information about what happened at
10 the school board. You said that you were on
11 the community education committee?

12 A. Yes, sir.

188 13 Q. And on the policy committee?

14 A. Yes.

189 15 Q. And of course you attended board meetings
16 at least up until the time you purchased your
17 house in Florida, is that right?

18 A. Yes, sir.

190 19 Q. Isn't it true that you didn't review
20 minutes of board meetings after they were
21 issued?

22 A. At first I did, the first couple of
23 meetings, but after that I may have skipped
24 through them, but not really read them all.

191 25 Q. Did you review minutes before you came

1 to testify today?

2 A. No, I did not.

192 3 Q. Did you review the transcript of your
4 deposition last June?

5 A. Yes, I did.

193 6 Q. Now, I understand that your sense of the
7 discussion of a new biology book was first
8 something that you paid attention to in June
9 of 2004.

10 A. Yes, sir.

194 11 Q. Is that right?

12 A. Yes, sir.

195 13 Q. Isn't it your understanding that the issue
14 before the board at that time was whether to
15 spend the money?

16 A. Correct.

196 17 Q. Not about anything else, was it? Just
18 spending the money?

19 A. No, that's not true either, sir. The issue
20 was that the biology book that Ms. Spahr wanted,
21 first Mr. Bonsell wanted to do some research and
22 check to see how much difference it was in the
23 new biology book compared to the book that they
24 had already had.

197 25 Q. Now, let me get a couple of things straight

1 with you if I could. You were not on the
2 curriculum committee, were you?

3 A. No, sir.

198 4 Q. And do you know that the 2004 biology
5 book was something reviewed by the school
6 administration in the middle part of July
7 in 2004? Are you aware of that?

8 A. No, sir.

199 9 Q. Did you know that there was a 2004 edition
10 of the biology textbook before it was reviewed
11 by superintendent Nilsen and assistant
12 superintendent Baksa and Bert Spahr and Jen
13 Miller in July of 2004?

14 A. No, sir.

200 15 Q. Did you ever look at the biology textbook
16 yourself?

17 A. No, sir.

201 18 Q. You relied entirely on the curriculum
19 committee?

20 A. Yes, sir.

202 21 Q. And you knew that Mr. Buckingham was the
22 chair of the curriculum committee?

23 A. Yes.

203 24 Q. Now, you said in a candid answer to
25 Mr. Gillen's question that the June meetings

1 kind of blurred together in your mind, but I
2 gather you remember a couple of things. You
3 remember that Bert Spahr made a statement about
4 the need for new biology books, right?

5 A. Give me that again, sir.

204 6 Q. You remember at the June meetings, and I'm
7 not asking you to separate them because they run
8 together, that Bert Spahr made a statement in
9 support of the new biology textbook?

10 A. Yes.

205 11 Q. You didn't have much use for Mrs. Spahr's
12 opinions about things, did you?

13 A. I had, I valued some of her opinions, but
14 not all of them. I didn't agree with her on
15 all of them.

206 16 Q. What kind of opinions didn't you agree
17 about?

18 A. Well, as far as education and wanting the
19 new biology book, if there was a great change
20 in that biology book then I felt that we should
21 get the book. But up until that point I wanted
22 to wait and see what the new edition was like
23 and what was new.

207 24 Q. But in June you didn't know there was a new
25 edition, did you?

1 A. No, I did not.

208 2 Q. The other thing you remember about the June
3 meeting was a statement made by Charlotte
4 Buckingham, whom you had known for almost two
5 years?

6 A. Uh-huh.

209 7 Q. And her statement had some references
8 to Genesis and was in support of teaching
9 creationism in the Dover High School, correct?

10 A. I remember her comments, yes.

210 11 Q. And as I heard your testimony this morning
12 the only other thing you remember about the June
13 meeting on this issue was that the words
14 intelligent design were used?

15 A. Yes.

211 16 Q. That's it?

17 A. That's it.

212 18 Q. Do you remember Mr. Buckingham saying
19 anything about a textbook being laced with
20 Darwinism?

21 A. No, sir.

213 22 Q. Do you remember anything that
23 Mr. Buckingham said about someone died
24 on the cross two thousand years ago?

25 A. I do not recall of any statement.

214 1 Q. Just intelligent design, that's all you
2 remember on that subject?

3 A. Yes, sir.

215 4 Q. Who used the phrase intelligent design,
5 Mrs. Cleaver, do you recall?

6 A. When I first heard about this with the book
7 Of Pandas, when I came back in October I heard
8 about this intelligent design mentioned, I think
9 that was in July the last meeting. But I didn't
10 know anything about intelligent design at that
11 point.

216 12 Q. I want to be clear about where at that
13 point was. Let's take it step by step. Isn't
14 it true that in June you didn't know anything
15 about intelligent design?

16 A. No, I did not.

217 17 Q. And isn't it true that in June you didn't
18 hear anybody mention intelligent design?

19 A. No, I don't recall that I did.

218 20 Q. Okay, and you think now that you may have
21 heard someone mention intelligent design in
22 July?

23 A. I may have, but I don't -- I'm not sure
24 on that.

219 25 Q. Isn't it your testimony this morning that

1 the first contact you had with the book Of
2 Pandas and People was after you returned home
3 on October 2nd?

4 A. Correct.

220 5 Q. You were given a copy of that by Bill
6 Buckingham, right?

7 A. I asked Mr. Buckingham for a copy of it,
8 yes.

221 9 Q. You said you didn't read all of it, but I
10 gather you kind of paged through it, is that a
11 fair description?

12 A. Yes.

222 13 Q. And when you paged through it, were you
14 looking at anything in particular? For instance
15 were you looking for a use of the term God or
16 creationism?

17 A. Yes, I did look for that.

223 18 Q. How did you do that, with the index?

19 A. I went through page per page.

224 20 Q. But skimmed it, right?

21 A. But skipped some of it, but there was no
22 mention of God or the Bible in the book Of
23 Pandas and People.

225 24 Q. Now, I gather, and this is only relying on
25 testimony you gave earlier that you found Of

1 Pandas and People a little hard to read, is that
2 right?

3 A. Yes.

226 4 Q. And I take it that you didn't really think
5 it was an appropriate textbook for younger high
6 school students, am I right about that?

7 A. This is only my opinion, sir.

227 8 Q. That's all I'm asking for.

9 A. But I feel that the book Of Pandas and
10 People are like from the 9th grade through
11 the 12th, not for younger people.

228 12 Q. So you would say if a kid is below the 9th
13 grade it would be okay, but high school it might
14 be all right?

15 A. Yes.

229 16 Q. Did anybody on the board ever tell you that
17 they had done a study for whether Of Pandas and
18 People was an appropriate high school textbook?

19 A. No, sir.

230 20 Q. You never did any research on your own
21 about whether Pandas and People was a good
22 book, right?

23 A. No, sir.

231 24 Q. You never did any research to see whether
25 it was current science, did you?

1 A. No, sir.

232 2 Q. I think you said that you came back on
3 October 2nd and your sister told you there was
4 a controversy, or did I get that wrong?

5 A. I came back October the 2nd, and it was a
6 day after whenever I called my sister-in-law
7 to say hello and tell her I was home, and in
8 the course of our conversation she said there's
9 quite a big controversy in Dover about the
10 book called Pandas and People, whatever that's
11 about, and that Dover is going to be teaching
12 creationism.

233 13 Q. Okay.

14 A. And then I went to our meeting October
15 the 4th, and that book was on our agenda.

234 16 Q. Now, you said that the book was on the
17 agenda on October the 4th.

18 A. Right.

235 19 Q. What action if you recall was to be taken
20 by the board on the book of Pandas and People on
21 October 4th? Do you recall anything about that?

22 A. Well, as far as the action being taken the
23 teachers would not, were told that they were not
24 going to teach Pandas, anything out of the book
25 Of Pandas and People, that the book was only to

1 be there that the students can use as a
2 reference, but the teachers would not be
3 teaching.

236 4 Q. Isn't it true, Mrs. Cleaver, that the
5 subject of the curriculum change and the use
6 of the book Of Pandas and People didn't come
7 up on October 4th, but came up on the October
8 18th meeting agenda?

9 A. On the October the 18th --

237 10 Q. Isn't that when you voted on whether there
11 should be a change in the curriculum?

12 A. On the 18th is when we voted on that.

238 13 Q. That's when the decision was made to list
14 Of Pandas and People as a reference book, isn't
15 that right?

16 A. That may have been.

239 17 Q. And I know you had a planning meeting on
18 the 4th, but you didn't consider the curriculum
19 change or how to use Of Pandas and People on
20 October 4th, did you?

21 A. Would you say that again?

240 22 Q. Isn't it true that at the planning meeting
23 of the board on October the 4th, you didn't
24 really consider a curriculum change or how Of
25 Pandas and People would be used in the biology

1 class?

2 A. I think that was, that change was made on
3 the 18th of October.

241 4 Q. All right, thank you. Now, at the meeting
5 on the 18th Bert Spahr made another statement,
6 didn't she?

7 A. Yes.

242 8 Q. And she said at that statement that she
9 thought intelligent design should not be taught
10 in the high school, isn't that right?

11 A. Right.

243 12 Q. And she said that Of Pandas and People was
13 not a good science book, isn't that right?

14 A. I think she did.

244 15 Q. She's the only person that you ever heard
16 express an opinion who had some scientific
17 training about teaching intelligent design or
18 using Of Pandas and People, isn't she?

19 A. I heard others, but Bert Spahr took the
20 floor and she's the one that I recall the most.

245 21 Q. Okay.

22 A. There was other people that spoke, but I
23 don't recall what they said.

246 24 Q. Let me say my question again in a slightly
25 different way. Isn't it true that all of the

1 people that spoke at the October 18th meeting
2 who had some scientific background who were
3 teachers at the high school spoke against the
4 changed in the curriculum and using Of Pandas
5 and People?

6 A. They did speak against it.

247 7 Q. And the only people who were for it were
8 Alan Bonsell and Mr. Buckingham, isn't that
9 right?

10 A. I don't think so. I don't recall that
11 at all.

248 12 Q. At the October 18th meeting isn't it true
13 that no board member explained or expressed the
14 reason why or how the change in the curriculum
15 would improve education at the Dover High
16 School, isn't that true?

17 A. Would you please state that again?

249 18 Q. Isn't it true that at the October 18th
19 meeting no one from the board explained or
20 expressed how the change in curriculum would
21 improve education at the Dover High School,
22 isn't that true? It was the series of folks,
23 wasn't it, Mrs. Cleaver?

24 A. Yes.

250 25 Q. And you voted with Mr. Buckingham every

1 time, isn't that right?

2 A. I voted in my opinion what I thought was
3 right.

251 4 Q. Okay, let me put it a different way. You
5 said a few moments ago that Noel Renwich made a
6 series of amendments to the proposed change in
7 the curriculum, isn't that right?

8 A. Correct.

252 9 Q. And you recall that process, don't you?

10 A. Yes, I do recall.

253 11 Q. The whole series of votes, I thought there
12 were seven or eight or more, right?

13 A. Right.

254 14 Q. And those votes required you to either
15 support the change in the curriculum or to
16 fend off an amendment by Mr. Renwich, isn't
17 that right?

18 A. Yes.

255 19 Q. And in all of those votes you voted with
20 Mr. Buckingham, isn't that right?

21 A. I voted for them. If Mr. Buckingham voted
22 for them when I voted, yes.

256 23 Q. And in the end you voted to include Of
24 Pandas and People as a reference book?

25 A. Yes.

257 1 Q. And you voted to include a requirement that
2 intelligent design be mentioned or referred to
3 as part of the curriculum, isn't that right?

4 A. What I voted for is intelligent design that
5 our students could refer to it, but not be
6 taught intelligent design.

258 7 Q. And you did that as you said this morning
8 because you thought intelligent design was
9 another theory?

10 A. In opinion, I'm not a scientist, to me
11 that's another science text, that's what it is.

259 12 Q. And it was another theory to be compared
13 to evolution as a theory, right?

14 A. Well, if that's -- I guess that could be
15 put that way --

260 16 Q. Okay.

17 A. -- as far as I'm concerned. I didn't think
18 of evolution, but I just thought there should be
19 other theories that our children should be made
20 aware of.

261 21 Q. Well, you know that intelligent design is a
22 theory according to your understanding that has
23 to do with the same subject matter as evolution,
24 am I right about that? Is that a clear
25 question?

1 A. No, it's not, sir.

262 2 Q. Let me try it again. You know that there
3 are other theories in science, and even in
4 biology, right?

5 A. Correct.

263 6 Q. But it's only evolution that in your mind
7 requires that other theories be made available.
8 Isn't that true?

9 A. I just feel that there's other theories out
10 there that, we have the greatest science in the
11 word right here in our nation, and that our
12 students should be made aware of some of these
13 theories.

264 14 Q. But the other theories that you're
15 referring to have to do with the same subject
16 matter as evolution, not all the other
17 scientific theories that are out there, isn't
18 that right?

19 A. Well, sir, as far as other theories, I
20 think those are the only theories that are
21 available, the only theory available to our
22 students is evolution. So that's why I say
23 other theories are out there.

265 24 Q. Just two more quick questions. When you
25 voted for the curriculum on October the 18th --

1 A. Yes, sir.

266 2 Q. -- you yourself didn't really understand
3 intelligent design. You just knew that it was
4 as you put it another theory, is that right?

5 A. Correct.

6 MR. SCHMIDT: That was my only question.
7 Thanks very much.

8 THE COURT: Thank you, Mr. Schmidt.

9 Redirect, Mr. Gillen?

10 REDIRECT BY MR. GILLEN:

267 11 Q. Sure. Jane, we talked about this yesterday
12 and I don't want to belabor the point. I know
13 it's hard for you to try to date things
14 specifically, but I want to ask you this
15 question just by way of trying to mark when
16 you first heard of intelligent design. Do you
17 remember Charlotte Buckingham speaking at a
18 board meeting?

19 A. Yes, sir.

268 20 Q. Okay, and do you recall that that
21 presentation she gave was in June of 2004,
22 one of the, again one of the two meetings?

23 A. Truthfully I cannot remember if that was in
24 June or what meeting that was. It could have
25 been June.

269 1 Q. Okay. Well, do you think it was in the
2 summer?

3 A. I think it was in the summer.

270 4 Q. Okay, let me ask you this.

5 A. You know, may I say something, Mr. Gillen?

271 6 Q. You may.

7 A. Because I was gone after July, it had to be
8 June or July that she spoke.

272 9 Q. Okay, let me ask you this. Do you recall
10 intelligent design being mentioned before or
11 after Charlotte spoke?

12 A. I think that was after.

273 13 Q. You do?

14 A. I'm not sure.

274 15 Q. I know it's hard for you to remember.

16 A. I'm not sure.

17 MR. GILLEN: Well, that's it. No further
18 questions.

19 MR. SCHMIDT: No recross.

20 THE COURT: Thank you, ma'am, very much.

21 You're excused. That will complete your

22 testimony.

23 MR. GILLEN: My next witness, may I confer
24 with counsel?

25 THE COURT: You may.

1 (Brief pause.)

2 MR. GILLEN: Your Honor, the defense will
3 call Alan Bonsell.

4 (Alan Bonsell was called to testify and was
5 sworn by the courtroom deputy.)

6 COURTROOM DEPUTY: State and spell your full
7 name for the record.

8 THE WITNESS: My name is Alan Bonsell.

9 A-L-A-N. B-O-N-S-E-L-L.

10 DIRECT EXAMINATION BY MR. GILLEN:

275 11 Q. Good morning, Mr. Bonsell.

12 A. Good morning.

276 13 Q. Let's just get out a few facts about you
14 as a person here. Are you married?

15 A. Yes, I am.

277 16 Q. Do you have children?

17 A. Yes, I do.

278 18 Q. How many?

19 A. I have two children in school.

279 20 Q. Okay. Tell us about the children in
21 school. Do they attend Dover schools?

22 A. My daughter is in 9th grade at Dover and
23 my son is in 11th grade, but he is presently at
24 York Technical School. He went to Dover through
25 9th grade and then went to York Tech.

280 1 Q. Tell us a little bit about your educational
2 background. What's your education?

3 A. I graduated from West York High School,
4 which is right next to Dover, and I also
5 graduated college, York College of Pennsylvania.

281 6 Q. And what was your course of study?

7 A. My major was in management business
8 administration.

282 9 Q. Are you currently employed?

10 A. I am.

283 11 Q. How so?

12 A. I've been a business owner, C.R. Smith
13 Radiator and Auto Repair, since 1984.

284 14 Q. Are you currently a member of the Dover
15 area school district school board?

16 A. Yes, I am.

285 17 Q. Okay, let's talk about how you came to the
18 board. When did you first join the school
19 board?

20 A. I joined the school board in it would have
21 been December of 2001.

286 22 Q. Were you elected or appointed?

23 A. I was elected.

287 24 Q. And I take it you ran for office?

25 A. Yes, I did. I ran in the primaries in May

1 of 2001, and then was elected in the general
2 election in November of 2001.

288 3 Q. And why did you run for that office?

4 A. Well, I ran for a number of reasons. One
5 is for fiscal responsibility. There was a big
6 fight going on at the time with the building
7 project, and also my goal is to give back to
8 the community and try to make Dover the best
9 school in the county.

289 10 Q. Let's look at the building project. When
11 you ran, what were you seeking to improve with
12 respect to the district's approach to the
13 building project? What did you see the problems
14 were?

15 A. One of the problems with the building
16 project was that the current board was trying
17 to push through as the people in Dover liked to
18 call it, a Taj Mahal version of the high school,
19 which were they were talking about spending
20 thirty, forty million dollars on a high school
21 building project, which a lot of us in the
22 community felt was ridiculous being in the kind
23 of tax revenue situation that we have in Dover.

290 24 Q. And what is that tax revenue situation?

25 A. Well, we have like the second lowest I

1 believe tax revenue of any school district in
2 the county, and I wanted to be sure and I think
3 most people wanted to be sure that every dollar
4 that we spend actually goes, you know, to the
5 kids' education and not to some big building.

291 6 Q. When you ran for school board was there a
7 religious dimension to your platform or
8 campaign?

9 A. None at all, no.

292 10 Q. Well, did you have a specific platform that
11 you ran on?

12 A. We ran on taking of, of stopping the
13 building project and going back and redesigning
14 it and making sure it was educationally sound
15 for the kids, as well as being affordable for
16 the taxpayer, and also to make sure that the
17 kids, our students had what they needed as far
18 as books and technology, and like I said before
19 to try to improve the educational standards in
20 the public school of Dover.

293 21 Q. Okay. You said, "We ran." Who did you run
22 with?

23 A. I ran with Sheila Harkins, Angie Yeungling,
24 and Casey, or Mrs. Brown.

294 25 Q. Well, let's take them one at a time just to

1 take a look at how you came to know them. Why
2 did you run with Sheila Harkins?

3 A. Sheila Harkins was one of the I guess
4 minority board members at the time, and she
5 had a lot of the same concerns that I did. So
6 just obvious joining her.

295 7 Q. Okay. Did you know Sheila Harkins before
8 you ran with her?

9 A. No, I did not.

296 10 Q. Did you discuss some sort of religious
11 agenda when you decided to run with Sheila
12 Harkins?

13 A. No. No, I did not.

297 14 Q. How about Angie Yeungling, you mentioned
15 her. Why did you run with Angie Yeungling?

16 A. Well, Angie Yeungling would come to board
17 meetings along with at the board meetings I
18 would and was an outspoken critic of the board
19 with the building project and was someone also
20 that had the same leanings I did, that wanted a
21 better education for our kids but wanted to also
22 make sure that the tax money was spent properly.

298 23 Q. Did you know Angie Yeungling before you ran
24 with her?

25 A. No, I did not.

299 1 Q. Did you discuss any religious agenda --

2 A. No.

300 3 Q. -- with Angie Yeungling before you decided
4 to run with her?

5 A. No, I didn't.

301 6 Q. How about Casey Brown? Why did you run
7 with her?

8 A. Casey Brown was also a minority member on
9 the board at the time and basically was like
10 Sheila Harkins, was basically railing against
11 the building project, and also along the same
12 line, I mean, everybody had this sort of same
13 mindset when it came to that, on what we ran on.

302 14 Q. Did you discuss any religious agenda with
15 Casey Brown when you decided to run with her?

16 A. No.

303 17 Q. You've mentioned the building project, and
18 several witnesses have, and I'd like to get a
19 sense here for the record of the impact that
20 that project has had on the Dover community.
21 How would you describe that impact?

22 A. Well, I mean as far as impact --

304 23 Q. Well, has it been something that brought
24 the community together, divided it?

25 A. Well, there was a lot of meetings where

1 there was hundreds of people at, and they were
2 all in the same agreement as I was, and I
3 believe after that, I mean the community came
4 together in the fact that they voted us into
5 office, we did what we said we were going to do
6 and to revamp that. I mean, I believe there's
7 still probably, there's still I believe some
8 grudges that are with people today.

305 9 Q. Well, let's look at this period before
10 you come to the board. Did you personally
11 do anything designed to mobilize community
12 sentiment with respect to the building project?

13 A. Did we do anything? One thing I remember
14 doing that there was a petition that was signed
15 that went around the Dover area to sign to tell
16 the board to stop what they're doing and go back
17 and look and see what the students actually
18 needed and not what somebody wanted, and I
19 believe there was almost close to 1,800
20 signatures from the Dover community, which was
21 that was a lot of signatures that came together,
22 and was presented to the board.

306 23 Q. Did you play a role in that?

24 A. Yes, yes.

307 25 Q. And do you know how the petitions were

1 received by the board at that time?

2 A. Yes, I can remember it vividly. It was
3 given to the board and --

308 4 Q. By whom?

5 A. I believe I presented the petitions to
6 the board at a board meeting. This is before
7 I was on the board, and I believe it was Lonnie
8 Langioni who basically took the petitions up,
9 I remember standing up, turning around, and
10 throwing the petitions basically on the floor.

309 11 Q. Well, who was on the board at this time
12 when you presented the petitions?

13 A. Well, the plaintiff Barrie Callahan was
14 on the board, Lonnie Langioni, Larry Snook,
15 Mr. Murphy, and there was some others, too.

310 16 Q. Did you have, did the election you've
17 referenced in November of 2001 have an impact
18 on the build project?

19 A. Did the election have an impact on the
20 building --

311 21 Q. Yes.

22 A. Yes, it did. I mean, the building project
23 was stopped after that point. One of the things
24 going back to the petitions and everything is
25 that I remember after the primary, when we won

1 the primary we asked the board to stop it
2 because we were going to stop the building
3 project, but I remember that the group of,
4 Barrie Callahan and them that kept pushing this
5 forward trying to push, ram it through before we
6 were elected in the fall, and spent, oh my, I
7 think they wasted half a million dollars or
8 more, which we then stopped, we went back
9 starting in 2002 and revamped the whole building
10 project.

312 11 Q. Did the election results you mentioned have
12 an impact on the ability of the individuals you
13 mentioned, Snook, Langioni, Mrs. Callahan, to
14 influence the board's actions?

15 A. Well, the thing was before the election
16 they were part of the majority that was trying
17 to push this through and was basically a 6-3
18 board at the time. When the election took place
19 and I took office in `01, December of `01, it
20 changed the dynamics of it from a 6-3 board in
21 favor of the old more expensive project to a 6-3
22 board in going back to relook at the project.

313 23 Q. Did the division between board members you
24 have described along the lines relating to the
25 build project affect your ability to work with

1 Mr. Snook, Mr. Langioni, and Mrs. Callahan?

2 How was your relationship with Larry Snook
3 after you came on the board?

4 A. Well, I mean relationships were strained
5 somewhat. I mean, I tried to work with the
6 people as best as I could, but like I said,
7 I think there were some hard feelings from those
8 three.

314 9 Q. How about Mr. Langioni, same situation or
10 different?

11 A. Same situation.

315 12 Q. How about with Mrs. Callahan?

13 A. Really with Mrs. Callahan, I mean, I
14 remember the time period over the years where
15 she basically publicly criticized the board,
16 even calling us, as far as calling us
17 anti-education.

316 18 Q. Did the three members you mentioned remain
19 on the board?

20 A. Well, they were supposed to be I believe on
21 for two more years, but some point at some point
22 I believe in the spring of, somewhere around the
23 spring of 2002 I believe Lonnie Langioni and
24 Larry Snook came into the meeting, basically
25 criticized the board, said, "We quit, we

1 resign," and walked out of the meeting.

317 2 Q. How about -- well, what was your reaction
3 to that?

4 A. I felt it was ridiculous. I felt it was
5 childish.

318 6 Q. How about Mrs. Callahan? Did she remain on
7 the board?

8 A. She remained on the board through the rest
9 of her term.

319 10 Q. And was she re-elected?

11 A. No, she was not re-elected.

320 12 Q. Now, is the resignation of Mr. Snook and
13 Mr. Langioni when Jane Cleaver and Bill
14 Buckingham were appointed?

15 A. Yes. At the time when we have resignations
16 like that the state tells the board that they
17 have a certain period of time where they need to
18 advertise for people who might want to come on
19 the board. Then we have a meeting where we
20 interview different people, and then we as a
21 board, as always the board decides together,
22 we elect people to fill those positions.

321 23 Q. Well, let's look at them one by one,
24 starting with Mr. Buckingham. Did you have
25 a personal friendship with Mr. Buckingham when

1 he applied to fill the vacancy on the board?

2 A. No.

322 3 Q. Did you discuss religion or a religious
4 agenda with Mr. Buckingham prior to appointing
5 him or voting for his appointment?

6 A. No.

323 7 Q. Do you recall the vote that put
8 Mr. Buckingham on the board?

9 A. Do I recall the vote?

324 10 Q. Yes. What the vote outcome was.

11 A. Well, the vote outcome was, the vote was to
12 put him on the board. I don't know the exact --

325 13 Q. Okay. Had you asked Mr. Buckingham to
14 apply?

15 A. No.

326 16 Q. Did you vote to approve him to fill the
17 vacancy?

18 A. Yes, I did.

327 19 Q. And why did you do that?

20 A. Well, in interviewing him basically he was
21 saying that he had the same kind of fiscal
22 responsibility, that that's what he was looking
23 at. He wanted to make the school district
24 better. You know, he was a police officer.
25 I mean, it was -- I thought he would be a good

1 fit.

328 2 Q. Did you know anything about
3 Mr. Buckingham's religious convictions
4 when you put him on the board?

5 A. No.

329 6 Q. Let's look at Jane cleaver. I mean, she's
7 mentioned that you knew her. Did you have a
8 personal friendship with her at the time?

9 A. I don't know if it was a personal
10 friendship. I knew Jane cleaver ever since
11 I was a little boy. She's lived in Dover for
12 fifty or sixty years. She had a five and ten
13 cent store on Main Street in Dover, and I didn't
14 really have a per se friendship with her, but
15 everybody, I think anybody that lived in Dover
16 any period of time knew Jane. She was like one
17 of the pillars of the community.

330 18 Q. Did you vote to put her on the board?

19 A. Yes, I did.

331 20 Q. Why did you vote for Jane Cleaver?

21 A. I thought she would be an outstanding
22 addition to the board. She knew Dover inside
23 out. She knew the people, she had a business,
24 she had the, she worked with people, with
25 customers, with employees, had to run budgets,

1 had to keep, I mean, everything that would be
2 perfect to be on a board.

332 3 Q. Let's look at the building committee as
4 seen through your eyes and its impact on the
5 relationships with the faculty or staff at
6 Dover. Do you think that the new board's
7 attitude towards the building project had an
8 affect on the relationships between the board
9 and the teachers?

10 A. Well, I think somewhat as far as the high
11 school teachers go because, you know, they were
12 looking forward to this and building up to this,
13 and then we stopped the project and revamped it
14 and it took longer, and I think there might have
15 been some teachers that had hard feelings about
16 that.

333 17 Q. How about the teachers union? Did you feel
18 like the building project affected relationships
19 between the board and the union?

20 A. Well, the building project itself or other,
21 just the building project itself? There
22 probably was some things there that would,
23 again going back with the teachers, with the
24 union, there could be some hard feelings there.

334 25 Q. Was there any other issue during this

1 period when you were first coming on the board
2 and thereafter that affects the relationship
3 between the board and the union?

4 A. The board and the union? With the building
5 project itself?

335 6 Q. Yes. I'm just trying to get a sense, give
7 the judge a sense for the climate in which this
8 controversy is taking place. How about
9 Mr. Miller? Is there anything about Mr. Miller
10 that comes to mind?

11 A. Well, Mr. Miller comes to mind, but that
12 doesn't have to do with the building project
13 per se that came along later.

336 14 Q. Okay. Well, then let's leave it for now.
15 You were elected in November of 2001. So when
16 did you first start as a working member of the
17 board?

18 A. Well, basically my first meeting was in
19 December of 2001. So my first full year would
20 be 2002.

337 21 Q. Were you a member of the curriculum
22 committee in 2002?

23 A. Yes.

338 24 Q. Who put you on that committee?

25 A. That would have been Mrs. Casey Brown.

339 1 Q. Now, some documents relating to board
2 retreats in 2002 and 2003 have been produced
3 by the school district and the subject of much
4 discussion, so let's talk about those documents.
5 As you sit here today do you recall anything
6 specifically about the board retreats in 2002
7 and 2003?

8 A. Specifics? Not really anything in those
9 board retreats, I don't really remember
10 specifics of any of the board retreats I've
11 been at.

340 12 Q. As you sit here today can you recall
13 generally what happened at either retreat?

14 A. Well, it's just sort of a get-together.
15 It's an informal thing where the administrators
16 and board members get together, you talk, you
17 have dinners together. It's just more of a
18 team building thing than anything.

19 MR. GILLEN: Your Honor, this is a good
20 point for me to get together the binders that
21 this witness is going to need as I go forward.
22 Might I suggest we take a break now?

23 THE COURT: Yes. It's a little early, but
24 we'll let you do that. Why don't we take our
25 twenty-minute break, and we'll return and pick

1 up the direct examination. We'll be in recess
2 until that point.

3 (Recess taken at 10:08 a.m. Testimony
4 resumed at 10:31 a.m.)

5 THE COURT: Be seated, please. All right,
6 Mr. Gillen, we resume direct examination.

7 CONTINUED DIRECT BY MR. GILLEN:

341 8 Q. Yes. Thank you, Your Honor. Mr. Bonsell,
9 let me ask you, the first retreat for which
10 documents have been produced is January of 2002.
11 At the time of this retreat how long had you
12 been on the school board?

13 A. Barely a month.

342 14 Q. And did you have an understanding
15 concerning the purpose of the board retreats?

16 A. Like I said before, it was basically a
17 get-together. It was more of a team building
18 experience, because we had new board members on
19 the board and all the new administrators, the
20 principals and things like that, it was mainly a
21 time to get together and talk and get to know
22 each other more than anything.

343 23 Q. Do you have a recollection about the
24 approximate length of the board retreat in
25 January of 2002?

1 A. I think most board retreats ran two or
2 three hours, and that included dinner.

344 3 Q. Did there come a time during that January
4 of 2002 board retreat where Rich Nilsen
5 solicited input from board members about
6 thoughts on their mind or other matters? Do
7 you recall that?

8 A. That's basically, you come to the retreats
9 and basically anything that you might have, you
10 know, any thoughts, questions, that's basically
11 it.

345 12 Q. Do you recall approximately how long this
13 session took where Rich Nilsen solicited input?

14 A. Well, I'm not sure of exactly the length,
15 the total length. Like I said, the whole
16 evening was two or three hours, and that
17 included eating dinner, but each person, each
18 of the board members I think was only given two
19 or three minutes, something along that line, to
20 discuss or say anything they had on their mind.

346 21 Q. Okay. Let me ask you to look at
22 Defendant's Exhibit 288.

23 A. Okay.

347 24 Q. And just if you would first scan the
25 document generally and tell me as you sit here

1 today do you remember any specific discussions
2 about any of the issues beneath each member's
3 name?

4 A. Not a specific discussion, no.

348 5 Q. Well, let me ask you, under your name here
6 there's a word that has a lot of is significance
7 for this litigation. The first item is
8 creationism. Do you recall using that term at
9 this January of 2002 --

10 A. Believe me, I've been thinking about it,
11 ever since we brought this paper forward I've
12 been thinking about that, and to be honest I
13 don't remember in what context I said anything
14 about it, I'm sorry.

349 15 Q. Well, as you sit here today do you believe
16 that you must have said that word at this
17 retreat?

18 A. Oh, no, I believe I said it.

350 19 Q. And why do you believe that?

20 A. Well, these were notes that Dr. Nilsen
21 took, and I do have the confidence in Dr. Nilsen
22 and if he wrote that down, more than likely I
23 said the word, you know, I don't deny that.

351 24 Q. Let's talk about that word and what it
25 means to you. What does the term creationism

1 mean to you?

2 A. My definition? My definition of
3 creationism would be the literal interpretation
4 of the Bible. Basically, you know, the first
5 few books of Genesis. That's what I believe
6 personally.

352 7 Q. Is that what you believe in terms of your
8 religious convictions?

9 A. Yes.

353 10 Q. Well, there's another word there's been a
11 lot of discussion about, which is intelligent
12 design. Do you believe that is creationism?

13 A. Absolutely not.

354 14 Q. And why do you take that position?

15 A. Well, creationism is like I said the
16 literal interpretation of the Bible. ID
17 is a scientific theory made up by scientists.
18 I mean, it's a science, it's science. I mean,
19 it's two separately distinct things. I know
20 this whole court is about that, but I mean, or
21 this whole case is about this, but it's two
22 separate entities completely.

355 23 Q. Well, let me ask you this. We'll get back
24 to that later. Look at the second item under
25 your name, "Prayer." As you sit here today do

1 you recall anything you said specifically about
2 prayer at this January 2002 meeting?

3 A. Not specifically, no.

356 4 Q. Well, let's get a little more general then
5 about this topic. Do you remember after coming
6 to the board any discussions by you about
7 prayer, prayer in the schools?

8 A. I'm sure this could have been in context of
9 asking questions about it, how does the school
10 handle it. You read so much in the papers of,
11 you know, some things you're allowed to do, some
12 things you're not allowed to do, and some of the
13 school districts allow you to pray, some you
14 don't, if it's student led, I know we have meet
15 you at pole at Dover every year. I mean, so
16 it's probably if that was in that kind of
17 context, probably how, that's the only thing I
18 would think, but specifically I don't --

357 19 Q. Well, okay, that's fair enough. Let me ask
20 you this. While you've been on the Dover area
21 school district board have you ever taken any
22 steps to require prayer in the schools?

23 A. None at all, no.

358 24 Q. Let's look, for the record we were looking
25 at the portion of Exhibit 288 with the Bates

1 stamp number 3968 in the lower right-hand
2 corner. Alan, I'd ask you to turn to the page
3 of Exhibit 288 with the Bates stamp number 3969
4 in the lower right-hand corner. Do you
5 recognize that document?

6 A. It looks familiar. I mean, it's basically
7 the agenda for the board retreat in March
8 of `03.

359 9 Q. Do you recall anything specifically that
10 was said about the items listed on this
11 document?

12 A. No, I mean nothing specific about these
13 items though.

360 14 Q. Okay. You'll see that the heading Roman VI
15 is "Board feedback and items of interest." Do
16 you recall a portion of the meeting that was
17 given over to that at all?

18 A. Like I said, I don't really recall pretty
19 much anything specific, specifics on these
20 subjects or feedback from the people or
21 questions or anything like that.

361 22 Q. Let's turn to the page of Exhibit 288
23 with the Bates stamp number 3970 in the lower
24 right-hand corner, and again I want to ask you
25 to look down that list and tell us whether you

1 recall anything that was said specifically about
2 any of these items. Do any of these issues in
3 2003 come to mind now?

4 A. The only thing that I can remember I
5 believe it was at this, about I made some
6 comments complementing the administrators, and
7 I guess it sticks in my mind because I guess one
8 of the few times this has ever happened is after
9 the meeting Mr. Renwich came up and shook my
10 hand and said he appreciated my kind comments,
11 and that just stuck with me because I thought
12 that was a very nice thing that he did and I
13 guess it just stuck in my mind.

362 14 Q. Well, again if you look at this document
15 that's been produced you'll see a number of
16 subjects under your name and let me ask you, the
17 first is mandatory ed line update schedule. Do
18 you remember anything you said about that?

19 A. I mean, what it says here, more information
20 on ed line.

363 21 Q. How about item 2?

22 A. Stress manners and dress, good behavior.
23 I mean, there again that's something that's, you
24 know, that's said quite often. I mean, I don't
25 remember coming out at this particular meeting,

1 I don't.

364 2 Q. Well, I mean that's what we're trying to
3 get a since for here. The third item is
4 creationism. Do you recall mentioning that?

5 A. No, I don't.

365 6 Q. Do you believe that you did as you sit
7 here?

8 A. Again, Dr. Nilsen took these notes, so
9 I have no doubt that I said it.

366 10 Q. The fourth item is emphasizing American
11 history, there's some bullet points. Do you
12 remember you said at this retreat about that?

13 A. I don't remember anything I said at the
14 retreat about this, no.

367 15 Q. Okay, how about more generally, do you
16 remember anything you had said to administrators
17 or teachers?

18 A. I think I've had discussions already with
19 Dr. Nilsen or possibly Mike Baksa concerning the
20 founding fathers and how, you know, how I felt
21 it was important that the kids knew about the
22 founding of our country. It's one of those
23 things where I looked at it, you can't fix
24 problems of today if you don't know how the
25 government is supposed to run, and these are the

1 men who made it, put it together, told you how
2 it works. It's like buying a car and having an
3 owner's manual. If you don't listen to the
4 owner's manual, these are the people who built
5 the car, so if you don't listen to that the car
6 isn't going to work that long, something along
7 that line.

368 8 Q. In your tenure as a board member have you
9 ever taken any steps to change the social
10 studies curriculum?

11 A. No, I haven't.

369 12 Q. Are there other areas of the curriculum in
13 the Dover area school district that the board
14 has looked at while you've been a member?

15 A. I'm sorry?

370 16 Q. Are there other areas of the curriculum
17 that the board members have look at while
18 you've been a member?

19 A. Oh, I remember looking at namely consumer
20 science, sex ed, I know we just basically put
21 in a whole K through 12 language arts. We
22 revamped the whole curriculum with the mandates
23 from the state. I'm think there's, I'm sure
24 there is more than that, but that's what comes
25 to mind.

371 1 Q. Do you remember speaking with Mike Baksa
2 about the biology text and evolution during the
3 2003 period?

4 A. Just the conversation being on the
5 curriculum committee, looking at the book,
6 that was a book that was up for, I believe
7 that was one, the book that was up for to be
8 purchased, and I had spoken to him concerning
9 the evolutionary section of it and was wondering
10 how the teachers or how the Dover school
11 district did that section.

372 12 Q. Well, did you have a concern that you can
13 remember about the presentation of evolutionary
14 theory in the --

15 A. What runs in my mind is basically the, when
16 you're teaching, this is a theory that they're
17 teaching, and when they don't include, you know,
18 problems with it or gaps in a theory I mean,
19 and you teach it, it almost sounds like they're
20 teaching it as fact, and that's what, you know,
21 I was sort of concerned about and was just
22 asking questions about.

373 23 Q. Well, you know, several witnesses have been
24 asked, and I'm sure you will be as well, it's a
25 fair question, what do you really know about

1 evolutionary theory? What were you relying on
2 when you looked at this biology text?

3 A. Well, over the years, I mean, I've gained a
4 lot of knowledge through books and videos and
5 TV, internet. I mean, there's a lot of
6 information that I've come across with that
7 that --

374 8 Q. Well, can you state anything more specific?
9 I mean, if you're looking at this text were
10 there things that you knew that you --

11 A. Well, one of the things I remember seeing,
12 it was on TV I think that was through the
13 National Geographic or Discovery, they had
14 talked about the Piltdown Man and how the
15 Piltdown Man in the early 1900's was basically
16 this was the find of all finds and this was,
17 this proved the evolutionary theory, and from
18 I think from that point up to the 1950's that
19 was viewed that way until they found out that it
20 was a hoax or a fraud, that someone had taken,
21 you know, orangutan teeth or something like that
22 and filed them down, and that was one of the
23 things that I've seen things on different
24 subjects of how bears turn into whales, you
25 know, this was a natural scientific theory

1 which I just thought was absurd. There's also
2 statistical things that I've read about how the
3 statistical probability of life happening by
4 itself was basically impossible, I mean
5 statistically.

375 6 Q. Were these things that you knew when you
7 looked at the biology text?

8 A. I believe so, yes.

376 9 Q. Were they things that you had just
10 encountered in general reading or did you
11 make a specific inquiry when the biology
12 text was up for review?

13 A. Well, these are things that I just over the
14 year have seen or read. Like I said, I don't
15 really have specific, these are just different
16 pieces of information I have gotten through all
17 these different types of outlets.

377 18 Q. Did the information that you described bear
19 on your review of the biology text in 2003?

20 A. I'm sorry?

378 21 Q. Did the information you described, did you
22 see that as relating to the biology text when
23 you reviewed it in 2003?

24 A. Yes.

379 25 Q. Tell us how.

1 A. Well, basically it sort of glossed over
2 that, it didn't even mention any kind of
3 problems or anything along those lines, and I
4 thought it would be something I was curious
5 about why that was.

380 6 Q. Did there come a time when you came to know
7 that Mike Baksa had communicated your questions
8 to him to the science faculty?

9 A. I believe so, yes, they did, and I at some
10 point then in `03 I believe we had a meeting.

381 11 Q. Do you remember -- when was the meeting?

12 A. That would have been in the fall of `03.

382 13 Q. Do you remember anything from that meeting?

14 A. Yes, it was myself, Mike Baksa, I believe
15 Bert Spahr, Jen Miller, plaintiff Brian Rehm.

16 There was another, I believe there was
17 Mr. Eshbaugh, and I believe there was, I
18 think there was another science teacher there,
19 but I'm not sure.

383 20 Q. Tell us what you remember about that
21 meeting.

22 A. Well, it was a nice, cordial meeting, and
23 we got together and basically they educated me
24 on how they presented the biology curriculum and
25 that section of it.

384 1 Q. Did you gain an understanding as to how
2 they presented the biology curriculum relating
3 to evolution as a result of this meeting?

4 A. Yes, I did.

385 5 Q. Tell us what it was.

6 A. Basically they said that they taught
7 adaptation over time, or microevolution, and
8 I remember one of the examples that sticks out
9 in my mind, they talked about I believe the
10 peppered moth and how they were showing that has
11 how, I think it changed colors over time or
12 something if I'm not mistaken.

386 13 Q. Did you come away from this meeting with
14 an understanding concerning whether teachers
15 addressed the origins of life in their
16 presentation?

17 A. They told me that they didn't present
18 origins of life.

387 19 Q. How about creationism? Was creationism
20 discussed at the meeting?

21 A. Yes, it was discussed at the meeting.

388 22 Q. Well, let me ask you, did you come away
23 from the meeting with an understanding
24 concerning whether teachers addressed
25 creationism?

1 A. Yes, I did.

389 2 Q. Well, tell us what that was.

3 A. Well, they told me in the meeting that
4 basically they mentioned creationism in the
5 classroom, but they didn't teach creationism
6 in the classroom.

390 7 Q. Do you know how the subject of creationism
8 was brought up? Do you remember who brought it
9 up?

10 A. I don't remember, it could have been one of
11 the teachers because they were doing most of the
12 talking. But I'm not sure, I'm not sure.

391 13 Q. Okay. Well, what was your reaction to that
14 information?

15 A. Well, I was happy in two respects about
16 that information. Basically one is that they
17 mentioned creationism in the fact that they
18 didn't say, they didn't come out and say it's
19 wrong or you can't believe that or whatever, but
20 I was also happy in the fact that they weren't
21 teaching it, because I don't think they should
22 be teaching it.

392 23 Q. Well, explain that, because that's
24 important. What is your position on it?

25 A. Well, I believe that's up to me and my wife

1 or the other kids and their parents regarding --

393 2 Q. Do you recall receiving anything at this
3 meeting?

4 A. I received, yes, Mrs. Spahr had given me a
5 packet of information, and I believe it was
6 information from an ACLU web site saying, given
7 the, telling about I guess different things on
8 creationism and you can't teach it or you can't
9 do different things with it.

394 10 Q. What was your reaction to receiving that
11 information?

12 A. Well, I was, you know, I was a little taken
13 aback by it because nobody in the meeting was
14 talking about teaching creationism. They said
15 they didn't teach it, and --

395 16 Q. What was the tone of the meeting? Describe
17 it as best you can.

18 A. The tone of the meeting was it was just a
19 friendly meeting. A get-together, you know,
20 here's a board member came in who had some
21 questions, and they basically talked and told
22 us and everything was friendly. There was no
23 arguments, no anything. I mean, I came away
24 from this, it was a nice meeting.

396 25 Q. How about when you parted? Was it on good

1 terms?

2 A. Sure.

397 3 Q. Or was it --

4 A. There were no problems whatsoever.

398 5 Q. Did you ever ask Mike Baksa to take any
6 action with respect to the biology text or the
7 biology curriculum as a result of this meeting?

8 A. No, I did not.

399 9 Q. Now, you mentioned reviewing the biology
10 text in 2003. Was there a reason that you
11 reviewed the text?

12 A. Well, the book was coming up to be
13 purchased. I mean, it was then I believe
14 in the cycle, if I remember correctly that
15 was in the cycle to be purchased.

400 16 Q. And so what was your purpose in reviewing
17 it?

18 A. Well, basically we were looking at the
19 books to purchase the books.

401 20 Q. Were there any considerations that you
21 brought to your consideration of the text in
22 2003? I mean, what factors are you considering
23 when you're looking at books?

24 A. Well, I mean there's a cycle that
25 Dr. Nilsen had put them on, like a seven-year

1 cycle, but the board sort of looked at okay,
2 we want to look at each one of these books in
3 the cycle. I mean, that was a good idea that
4 they had so that all these books didn't come up
5 at one time, but we wanted to make sure that,
6 you know, one, the books were worn out, and two
7 basically I mean are the new books going to be
8 different from the old books, or is it going
9 to help in the mandating of the teaching or
10 something along that line.

402 11 Q. Was there, do you recall there being a
12 concern in this period about whether students
13 had a biology text?

14 A. There was concern?

403 15 Q. Expressed at board meetings.

16 A. Oh, expressed at board meetings. Yes,
17 Barrie, Mrs. Callahan, would come to board
18 meetings quite often and basically complain
19 about things, and this was one of the things
20 that she was always asking about.

404 21 Q. Well, did you share Ms. Callahan's concern
22 for whether teachers had a biology text in 2003?

23 A. I think she said something that the kids
24 didn't have books. We had a set of books, but
25 that wasn't, it wasn't true that the kids didn't

1 have books.

405 2 Q. Were the texts purchased in 2003, the
3 biology texts?

4 A. In 2003, no, they were not purchased in
5 2003.

406 6 Q. Did you prevent the purchase of the biology
7 text in 2003 because you had some objection to
8 the content of that text?

9 A. That never came into it at all. It was a
10 fiscal thing. Plus the books I believe were
11 1998, so the books were only like four, five
12 years old, something like that. They weren't
13 actually seven years old.

407 14 Q. Did you take any other action with respect
15 to the biology text or curriculum through the
16 close of the year 2003?

17 A. No.

408 18 Q. That brings us to 2004. Did your position
19 on the board change in 2004?

20 A. Yes, I was elected to be chairman or
21 president of the board.

409 22 Q. In your capacity as chairman of the board
23 did you have appointment power?

24 A. Yes.

410 25 Q. And did you appoint the head of the board

1 curriculum committee?

2 A. The president appointed every person to all
3 the subcommittees.

411 4 Q. Okay. Let's look at the board curriculum
5 committee which figures largely in this
6 litigation. Did you make Mr. Buckingham the
7 head of the board curriculum committee?

8 A. Yes.

412 9 Q. Why did you do that?

10 A. There was a slot open. I mean, I was
11 nominated as president, and he was available
12 to fill the position.

413 13 Q. Does the curriculum committee chair have
14 any more power on the committee than any other
15 committee?

16 A. It doesn't matter what your position is.
17 As far as power-wise, everybody only has one
18 vote. So they really don't have any more power
19 than anybody else.

414 20 Q. When you appointed Bill Buckingham to be
21 the chair of the curriculum committee, did you
22 tell him that you wanted to work intelligent
23 design into the biology curriculum at Dover?

24 A. No.

415 25 Q. When you appointed Bill Buckingham to the

1 chair of the board curriculum committee in 2004
2 did you tell him that you wanted creationism
3 worked into the curriculum at the Dover?

4 A. Absolutely not.

416 5 Q. Let's look at the beginning of 2004, from
6 January through the end of May.

7 A. Okay.

417 8 Q. And let me ask you, do you remember any
9 developments touching on either the biology
10 text or the biology curriculum during this first
11 portion of 2004?

12 A. Can you repeat that again?

418 13 Q. Sure. Let's look at the biology text, the
14 biology curriculum. Let's look at the year 2004
15 from the beginning of January through the end of
16 May.

17 A. Okay.

419 18 Q. I'm asking you to remember what you can.
19 Do you remember any information or developments
20 touching on the biology text or curriculum
21 during this period?

22 A. What I remember I believe of that is that's
23 when the, there's some information came out, I
24 believe it was either books or videos or, I
25 think it was videos, I don't know if it was

1 books, too, on the, I believe it was Icons of
2 Evolution and Unlocking the Mysteries of Life.
3 I guess that's the name of it.

420 4 Q. Did you review those materials?

5 A. I had looked, at some point I had looked at
6 Unlocking the Mysteries of Life, and I believe
7 it was later, I don't know the exact times on
8 this, of later I believe I reviewed, I know I
9 reviewed, specific times on that, I believe it
10 was later I reviewed Icons of Evolution.

421 11 Q. Well, you're not on the board curriculum
12 at this time. Why are you looking at these
13 materials?

14 A. Why am I looking at them?

422 15 Q. Yes.

16 A. It came out as something I guess that
17 interested me. I looked at the information.

423 18 Q. Do you remember any other materials or
19 discussions of the biology text or curriculum
20 during this period?

21 A. I really, I don't believe so.

424 22 Q. How about you mentioned the Unlocking the
23 Mysteries of Life and looking at that. Did you
24 look at Icons of Evolution?

25 A. Yes.

425 1 Q. Do you know generally what that deals with?

2 A. The Icons of Evolution?

426 3 Q. Yes.

4 A. That I believe basically talks, I think
5 there's basically two different areas it goes
6 into. It goes into I believe gaps and problems
7 of the evolutionary theory, and it also looks
8 into, I believe there was a teacher somewhere
9 out west that wanted to introduce other theories
10 and things like that into the system, into the
11 school system, and how badly he was treated by
12 the scientific community and people, you know,
13 people around him.

427 14 Q. Did you make a decision as a board member
15 in 2003 concerning whether the biology texts
16 would be purchased in 2004?

17 A. I believe what we had said, because the
18 teachers were concerned I believe, the teachers
19 were concerned that if they didn't get their
20 book because of the cycle they'd have to wait
21 another seven years to get their book. So we
22 told them that next year we would look at the
23 book and more than likely purchase a book next
24 year, and I believe we even earmarked some money
25 into the budget so that it would be there to

1 show them, you know, here's the money, we're
2 earmarking this money, so more than likely we
3 would be purchasing the books next year.

428 4 Q. Let's look again at this period from the
5 beginning of January to the end of May of 2004,
6 and let me ask you did you attend any board
7 curriculum committee meetings during this
8 period?

9 A. What were the dates?

429 10 Q. January through the end of May of 2004.

11 A. No.

430 12 Q. And why not?

13 A. Well, I was board president and I wasn't on
14 the committee.

431 15 Q. Let's look at June 2004. Actually before
16 we get there let me ask you, was the biology
17 text or biology curriculum discussed at all at
18 the board meetings from January through the end
19 of May of 2004?

20 A. Which was discussed?

432 21 Q. The biology texts. Do you remember
22 concerns being expressed at the board meetings
23 about the biology texts?

24 A. I don't believe so. Not at that time, no.

433 25 Q. Okay, let's look at June, and let's look at

1 the first board meeting in June. Do you have
2 the sense that there were two meetings?

3 A. There's normally, there's normally two
4 meetings each month.

434 5 Q. Do you remember attending the first board
6 meeting in June?

7 A. Yes.

435 8 Q. Okay. Do you remember anything that
9 occurred at that meeting?

10 A. Yes. Yes, I do.

436 11 Q. Tell us what you remember.

12 A. I remember I believe it was during public
13 comment period I believe, Barrie Callahan,
14 Mrs. Callahan came up to the board again, as
15 she usually does, and basically was complaining
16 to the board and wondering what's going on in
17 the books, and I believe it was Mr. Buckingham
18 was of telling her, you know, that books were
19 being reviewed, and she kept at him and at him,
20 basically harassment, but you know, we sort of
21 got used to her after a while, that I think he
22 blurted out something or something, he had like
23 laced with Darwinism I believe he said.

437 24 Q. Do you remember Mr. Buckingham making that
25 statement at this meeting?

1 A. I believe I do, yes.

438 2 Q. What was your reaction to that statement?

3 A. Well, it was like what? I mean, I didn't
4 exactly know how to take it to be honest.

439 5 Q. Well, what do you mean by that?

6 A. Well, I don't know what the, laced with
7 Darwinism, what does that mean exactly, and
8 why would he say that? It doesn't make -- I
9 was sort of taken aback by it, where does this
10 come from.

440 11 Q. Do you remember intelligent design being
12 discussed during this board meeting?

13 A. Just in general. I believe it was
14 mentioned in it, but specifically or how it
15 was mentioned, it could have been in response
16 to Mrs. Callahan. I'm not sure which person or
17 if there was more than one, but I can remember
18 that the intelligent design, I believe that was
19 basically the first meeting it was brought up
20 at.

441 21 Q. Well, let's look at the meeting as seen
22 through your eyes and then the reporting of it.
23 Did you read the daily papers during this June
24 2004 period?

25 A. Yes.

442 1 Q. Which ones?

2 A. Well, the York Dispatch is a paper that I
3 had delivered to my home, and the York Daily
4 Record I would buy a lot depending on, you know,
5 it wasn't delivered to my home, but I would buy
6 that periodically also, and the Sunday paper.

443 7 Q. Did you have an opinion concerning the
8 accuracy of reporting relating to board meetings
9 in these papers?

10 A. Yes, I did.

444 11 Q. Well, explain what that opinion is.

12 A. I'm trying to think of the words to say.
13 It's got to the point where the accuracy of the
14 press in the local papers was so terrible that,
15 you know, it's just here we go again, just more
16 inaccuracies, more biases, more half truths or
17 half a story.

445 18 Q. Well, let me ask you this. You have a
19 complaint here, does it relate to the reporting
20 of the board meeting in June of 2004?

21 A. I'm sorry, say that again?

446 22 Q. You've got a complaint about accuracy.
23 Sitting here today do you remember having that
24 complaint about the way these reporters
25 discussed the board meeting held in June?

1 A. I mean, this has been going on since two
2 years, this has been going on since before I was
3 even on the board, the inaccuracy of the press.

447 4 Q. How do you know that?

5 A. How do I know it? From reading the
6 articles. I mean, you go to a meeting and then
7 the next day you read the paper and it's like,
8 well, where were they at? They weren't at the
9 meeting I was at. And this is just another case
10 of they take words and mix words around.
11 They'll put in creationism for intelligent
12 design. They did that for months and months
13 and months and months and months.

448 14 Q. Is your grievance or your complaint about
15 the accuracy of the reporting something that is
16 limited to the reporting of this incident, or
17 more broadly?

18 A. No, if there's one thing other than saying,
19 you know, intelligent design and creationism
20 aren't the same thing, this is another thing
21 that the court needs to know. This has been
22 going on since before I was ever on the board.
23 The two years that I was involved before I ran
24 for the board in 2001 and ever since then, you
25 know, just it came to a point where you couldn't

1 trust what was said. I'm not saying every
2 single word was wrong. I'm just saying it came
3 to a point where it wasn't a trustworthy piece,
4 it wasn't a trustworthy document to look at and
5 see, and I heard it all the time from people all
6 over the place, other board members from
7 different school districts. I mean, township
8 people --

9 MR. HARVEY: Your Honor, objection. Hearsay
10 as to what was said by other people from other
11 townships or school districts.

12 THE WITNESS: It was my understanding --

13 THE COURT: Hold on, sir. When there's an
14 action, wait until I rule.

15 MR. GILLEN: I guess he can gain a
16 generalized impression from what he hears,
17 but it's --

18 THE COURT: No, he was about to repeat what
19 clearly is hearsay, so I'll sustain the
20 objection. Strike that portion of the answer to
21 the extent he got into it. You can proceed with
22 the next question.

23 BY MR. GILLEN:

449 24 Q. Thank you, Your Honor. Let's look at this
25 period from when you got on the board up until

1 this first meeting in June of 2004. Up until
2 that time had you gone to reporters and
3 expressed complaints about the reporting?

4 A. During this time or during all my --

450 5 Q. From the time you got on the board through
6 June of 2004, did you personally talk to
7 reporters and --

8 A. I personally talked to reporters.
9 I personally talked to editors of both
10 newspapers. So the answer is yes, absolutely.

451 11 Q. Can you be more specific? Do you remember,
12 again let's look at the period from when you get
13 on the board or before, up until June of 2004,
14 do you remember specific individuals that you
15 spoke to up until this time?

16 A. Well, I mean, you go in, when they start
17 changing words around, you say you can't be
18 right, this isn't what was said, you know.
19 You need to write what we say and not put in
20 your interpretations of it. On the building
21 projects I know they would tell these stories
22 about different things on, or they'd only tell
23 half a story, they'd tell this side but they
24 wouldn't tell the other side. The biasness just
25 shows through. I mean, the biasness, it just

1 drips with biasness.

2 And one thing I remember in particular
3 is that, and this goes back to the building
4 project, we had an article in the paper that
5 basically said the auditorium, I think the roof
6 was leaking in the auditorium, and if you read
7 the article, nothing in the article says
8 anything about a roof leaking, and the thing
9 was that we never talked about a roof leaking
10 in the meeting, there wasn't a roof leaking, and
11 I had had a phone conversation about this with
12 Heidi Bubb, and it was my understanding through
13 the conversation that I told her, you know,
14 papers are inaccurate, and she said --

15 (REPORTER NOTE: REMAINDER OF ANSWER
16 STRICKEN PER INSTRUCTION OF THE COURT.)

17 MR. HARVEY: Your Honor, objection. Hearsay
18 as to what Ms. Bubb said.

19 MR. GILLEN: That's true. Alan --

20 THE COURT: I'll sustain that. Strike that
21 last answer as to what the response was, and you
22 can proceed.

23 THE WITNESS: What can I say as far as my
24 understanding --

25 MR. GILLEN: Well, you cannot say what

1 someone said.

2 THE WITNESS: Okay. It was my understanding
3 that she agreed with me, and it was my --

4 MR. HARVEY: Objection, Your Honor. He's
5 getting directly back into hearsay.

6 MR. GILLEN: He's just giving his impression
7 of the results of the conversation. He's not
8 attributing words to it.

9 MR. HARVEY: This is not an area where I
10 think his understanding of it is directly
11 relevant to the case sufficient to warrant
12 him testifying about his understanding and
13 bringing indirectly what is clearly a hearsay
14 statement.

15 THE COURT: So is your objection hearsay or
16 is it relevance?

17 MR. HARVEY: It's hearsay, Your Honor.

18 THE COURT: Then I'll overrule it on a
19 hearsay basis.

20 BY MR. GILLEN:

452 21 Q. Let's look at the second board meeting in
22 June. Do you have any recollection of the
23 second board meeting in June of 2004?

24 A. A little bit of it.

453 25 Q. Well, I understand that they can blur

1 together. Do you remember a young man coming
2 to the podium during that meeting?

3 A. Yes, I believe Pell was his name.

454 4 Q. Did you know his name at the time?

5 A. At the time -- well, when you come up to
6 speak you're supposed to state your name and
7 address and where you live before you speak.
8 I believe he had talked about bringing
9 creationism in school and it wasn't right to
10 do that sort of thing.

455 11 Q. Do you recall any statements by board
12 members in response to the young man's address
13 to the board?

14 A. From what I can recall, the specifics is
15 hard to recall, but basically we weren't
16 teaching creationism and intelligent design,
17 probably because he was reading the papers and,
18 you know, creationism is creationism and that's
19 not what we were talking about.

456 20 Q. What were you talking about, Mr. Bonsell?

21 A. Well, intelligent design. We weren't
22 talking about creationism.

457 23 Q. Did you ever come by an understanding
24 concerning whether certain people attending
25 the board members, including reporters, saw

1 intelligent design and creationism as the same
2 thing?

3 A. I had a conversation -- well, yes, I mean
4 that's why we're here I guess, but there was
5 definitely people there that thought it was all
6 the same thing, and my understanding from
7 conversations is that Joe Maldonado thought it
8 was the same thing.

458 9 Q. Let me ask you, there's been discussion
10 about an address of Charlotte Buckingham to
11 the board. Do you recall that?

12 A. Yes, I do remember that.

459 13 Q. Well, tell us what you remember about her
14 address.

15 A. She came forward at a public comment
16 session and she started, I don't know what
17 you want to call it, she started a comment
18 during that point where she went on and on,
19 and it was basically religious, very religious
20 in nature.

460 21 Q. And there's been some thought that she went
22 on for more than the ordinary period, and you
23 were a board chairman. I want you to describe
24 how long she went on. What was your reaction to
25 her discussion?

1 A. That's true, she did go on longer than
2 normal, there's no doubt about that. Here's the
3 situation that I had myself into. I'm the board
4 president, and here's a lady who's the wife of a
5 board member comes up and starts talking, and
6 it's like you don't want to be rude, you don't
7 want to do that to her, because it got to the
8 point where, and the thing is I thought she was
9 going to stop two or three different times, but
10 she would start to talk, and then she would stop
11 and it's like okay, she's done, and then she'd
12 start talking again, and then it was like she
13 stopped and okay, she's done.

14 It got to the point I picked up my, I had
15 the gavel in my hand, because I remember I had
16 the gavel, if she would have spoken one more
17 word that would have been it, because I mean it
18 did go on longer than normal, I do admit that,
19 and if I had to do it over again I would have
20 gaveled her sooner.

461 21 Q. Well, let me ask you, before Charlotte
22 Buckingham spoke at this board meeting had you
23 spoken to her about what she was going to say?

24 A. Oh, no.

462 25 Q. Had you spoken to Bill about what she was

1 going to say?

2 A. Absolutely not.

463 3 Q. Had Bill Buckingham told you anything about
4 what Charlotte was going to say?

5 A. No.

464 6 Q. Did you see Mrs. Buckingham as addressing
7 board business when she addressed the board at
8 this meeting?

9 A. No, not at all.

465 10 Q. What was your reaction to her statement?

11 A. Really, I mean everybody is entitled to
12 come up in public comment, but I didn't really
13 think it was appropriate, but you know, she's a
14 citizen of Dover, so I mean it wasn't something
15 that I would really say was something that was
16 the time and place for.

466 17 Q. Well, did she mention creationism during
18 her address?

19 A. She probably did.

467 20 Q. At the time that she did so were you
21 considering a policy change that would require
22 the teaching of creationism in Dover area
23 schools?

24 A. There was never a consideration of a policy
25 change to make creationism part of the school

1 curriculum.

468 2 Q. Let me ask you about these meetings here in
3 June in terms of their turnout and get a sense
4 of their turnout relative to other meetings.
5 Did the turnout for these meetings in June far
6 exceed ordinary turnout?

7 A. Well, that can be answered two different
8 ways I guess. One is is that usually a board
9 meeting there's usually a couple of people
10 there. So was it more than normal? Maybe a
11 little bit more than normal. But was it like
12 a lot compared to other board meetings I've been
13 at? It doesn't even compare to some of the
14 board meetings I've been at.

469 15 Q. Okay, let's get a sense for that. If you
16 compare the attendance at these board meetings
17 to attendance at other meetings, were there
18 other issues that brought out a larger turnout?

19 A. The building project.

470 20 Q. And give us a sense for the numbers and the
21 duration of that kind of turnout as it relates
22 to the building project.

23 A. Well, there was many, many meetings that I
24 remember coming through where the cafeteria was
25 where we hold our meetings in the 5th and 6th

1 grade school basically was filled with people.
2 I mean hundred, hundred and fifty, I think one
3 time more, there could have been at least two
4 hundred people there, and I know there was at
5 the high school we had a meeting that there
6 was probably hundreds of people at that.

471 7 Q. Let's just compare the turnout at all the
8 meetings relating to the biology text or
9 curriculum throughout this 2004/2005 period.
10 Is it in any way larger than the building
11 project turnout you've referenced?

12 MR. HARVEY: Objection, Your Honor. I
13 think he's asking the witness to speculate.
14 No foundation.

15 MR. GILLEN: Speculate? He's entitled to
16 his opinion based on the facts he observe at
17 the meetings he attends. It's lay opinion
18 about a matter that may have some relevance
19 in the case.

20 THE COURT: No, I'll allow the answer.
21 The objection is overruled.

22 THE WITNESS: Can you repeat that, please?

23 BY MR. GILLEN:

472 24 Q. Sure. I'm just trying to create a sense
25 for how the turnout at these board meetings

1 relating to the biology texts or biology
2 curriculum compares to the turnout you've
3 described with reference to the building
4 project.

5 A. With all the community members, I mean
6 there really was no comparison I don't believe.

473 7 Q. How about from the standpoint of the tone
8 of the meeting? There's been some testimony
9 indicating that there was some unedifying
10 conduct at some of these meetings related to
11 the biology text or biology curriculum. Was
12 that an unusual feature of these meetings, or
13 were there other meetings that were similar?

14 A. There was many meetings where there was
15 heated discussion among board members, among
16 board members and some constituents. I can't
17 recall specifics, but I know as far as the
18 divisiveness or meanness, I mean none of these
19 compared to the one I recall with a meeting that
20 we had when we were voting on a football coach.

474 21 Q. And just describe that meeting in contrast.

22 A. It was a meeting that we were voting on
23 whether or not to keep, to rehire basically our
24 old football coach for next year, and there was
25 a lot of people there and when we voted not to

1 rehire him, I mean, I've never seen anything
2 like this. I mean, the people got up and
3 started swearing and cursing at the board and
4 kids and adults were flipping chairs, taking
5 chairs and actually flipping them on the floor,
6 and it got to the point I think it was the same
7 meeting that the ladies on the board were afraid
8 to go out and get in their car at night. I'm
9 not sure if we escorted them out or they
10 actually called the police to make sure that
11 they weren't, you know, somebody wasn't going
12 to damage their car or they would be accosted
13 or something like that outside. That's the
14 worst I've ever seen. I mean, nothing else in
15 this whole issue I mean pales in comparison to
16 that.

475 17 Q. Well, I don't want to linger too long, but
18 can you give us a sense for a few other meetings
19 or issues that have produced meetings that are
20 contentious, you know, well attended.

21 A. Well, that was -- the building project, the
22 building project went on for was going on for
23 years, and there was many, many building project
24 meetings that were like that. I think there
25 was an issue of pay for play where we were

1 discussing pay for play as an option maybe down
2 the road or something like that where there was,
3 I believe there was a lot of people that were,
4 you know, they didn't want to pay for play.

476 5 Q. Okay. We've talked about board meetings in
6 June. Did you attend any meetings of the board
7 curriculum committee in June of 2004?

8 A. No, not that I recall.

477 9 Q. Why is that?

10 A. Again I wasn't on the committee. I was the
11 board chairman at the time.

478 12 Q. All right. That brings us to July. Do
13 you recall a board meeting in July of 2004?

14 A. Yes.

479 15 Q. All right. You know, I'd ask you to look
16 at Exhibit 22.

17 A. 22? All right.

480 18 Q. Do you recognize that, Alan?

19 A. Yes, that's the, I believe the board agenda
20 for July 12th, 2004.

481 21 Q. Okay. I'd ask you to look at the page
22 with the Bates stamped number 101 in the lower
23 right-hand corner.

24 A. 101? Okay.

482 25 Q. And look under the item for curriculum.

1 What do you see there?

2 A. There's a notation that the Prentice Hall
3 Miller and Levine biology book will be ordered,
4 approved for order.

483 5 Q. Was it your understanding that that book
6 was going to be approved at this meeting?

7 A. Yes, I was.

484 8 Q. Okay. Was the book approved?

9 A. In July, no, it was not.

485 10 Q. And do you know why?

11 A. Well, between up until this point I believe
12 the teachers found out that there was a new
13 edition that came out. I believe it was a 2004
14 edition of the Miller and Levine book, and so I
15 believe they had asked us to postpone the buying
16 of the book until August so they had a chance to
17 review it and see if this was even a better book
18 than the '02 version.

486 19 Q. Okay. We're looking at July. Did you
20 attend any board meetings of the board
21 curriculum committee -- excuse me, let me strike
22 that question and ask a better one. Did you
23 attend any meetings of the board curriculum
24 committee in July of 2004?

25 A. I don't believe so.

487 1 Q. Why not?

2 A. Again I wasn't on the committee and I was
3 president of the board.

488 4 Q. Okay. Did there come a time around this
5 period, July of 2004, when you became aware that
6 Bill Buckingham was obstructing approval of the
7 science, more specifically biology text, that
8 had been recommended for purchase by the science
9 faculty?

10 A. I believe somewhere around that time
11 is I believe Dr. Nilsen and myself had a
12 conversation, I mean, we had about that fact.

489 13 Q. And tell us what you recall about that
14 conversation.

15 A. From what I can recall is that I believe
16 Mr. Buckingham had another book that he was
17 talking about putting, you know, putting along
18 with this book to be purchased or to be used as
19 textbook I believe.

490 20 Q. Did you learn the name of that text?

21 A. Yes.

491 22 Q. And what is the name of that text?

23 A. That was the Of Pandas and People book.

492 24 Q. Prior to this time had you heard of the
25 Of Pandas and People book?

1 A. Not that I can recall.

493 2 Q. Did you speak with Mr. Buckingham as a
3 result of the information you received from
4 Dr. Nilsen?

5 A. Well, I spoke, I believe I spoke to him at
6 a later date before the meeting because the
7 books needed to be purchased.

494 8 Q. Well, tell us what you told Mr. Buckingham.

9 A. Well, I mean I called him because I
10 believed it was going to be the books, the
11 Miller and Levine books were going to be put
12 on for August once the teachers got to look at
13 them, we were going to purchase those in August.
14 Yes, in August, and I believe I called him I
15 think it was right couple of days before the
16 meeting to make sure that the books were on,
17 there were no problems here, and he told me that
18 yes, that the books, he was going to bring them
19 up for approval.

495 20 Q. All right. As you left this conversation
21 did you believe the text recommended by the
22 science faculty would be approved for purchase
23 at the August meeting of the board?

24 A. That's what I thought, yes.

496 25 Q. With that in mind, Alan, look at Exhibit

1 28.

2 A. 28?

497 3 Q. Yes. Do you recognize that document?

4 A. That is the agenda for the first meeting in
5 August.

498 6 Q. Okay. I'd ask you to turn to the page that
7 deals with the curriculum. It's Bates stamped
8 number 116.

9 A. 116?

499 10 Q. Yes, and I'll ask you what you note there
11 as it relates to the Miller and Levine text.

12 A. Noted here, we'll be voting on approval of
13 the following text. That was in the agenda.

500 14 Q. Do you see a reference to Of Pandas?

15 A. There is no reference to Pandas.

501 16 Q. And was that consistent with what
17 Dr. Nilsen had told you about his attitude
18 towards placing the Of Pandas text in the August
19 agenda?

20 A. That was my understanding from every, you
21 know, yes.

502 22 Q. Well, do you recall proceedings at the
23 August 2nd, 2004 board meeting that relate
24 to the approval of the biology text recommended
25 by the science teachers?

1 A. I'm sorry, say that again.

503 2 Q. Do you recall anything that happened at the
3 August meeting that touched on approval of the
4 biology text?

5 A. Yes.

504 6 Q. Tell us what you recall.

7 A. Well, I believe at the time, I believe this
8 is the first meeting Mr. Buckingham brought up
9 the subject again of purchasing 220 he wanted to
10 buy, because we were purchasing 220 Miller and
11 Levine books, and he wanted to purchase I
12 believe 220 of the Of Pandas and People book I
13 believe.

505 14 Q. Okay.

15 A. But there again we took a vote on, we took
16 a vote on, we took a vote on this subject
17 though.

506 18 Q. Okay, and do you recall the nature of that
19 vote?

20 A. Yes.

507 21 Q. Tell us what you remember.

22 A. From I remember when we put this up for a
23 vote it was a 4-4 tie, and I guess under Roberts
24 Rules a 4-4, if it's a tie it's a no vote.

508 25 Q. And what was the purpose of the vote? Was

1 it to approval the text or not?

2 A. The purpose, the only purpose of that vote
3 from what I can recall is to purchase these
4 biology Miller and Levine books.

509 5 Q. And what was the result of the 4-4 tie?

6 A. Well, a 4-4 tie means no.

510 7 Q. Did you vote with Mr. Buckingham?

8 A. No, I did not.

511 9 Q. Why not?

10 A. Because I wanted to approve these books
11 for the kids to be put in the class.

512 12 Q. What about Of Pandas? What was your
13 attitude towards approving Of Pandas at this
14 meeting?

15 A. Well, I mean I was just starting to hear
16 about it. I believe I probably wanted to review
17 the book before I would say anything one way or
18 the other.

513 19 Q. Was the vote changed?

20 A. Yes. There was some heated discussions and
21 some questions I believe like okay, now what?
22 You guys voted no, what do the no votes want to
23 do here, and we had a heated exchange. I know
24 Mr. Brown was upset. We were all upset because
25 this was supposed to be voted and done and that

1 was the end of it. After this discussion Angie
2 Yeungling, who was one of no votes, decided to
3 change her mind, and under the rules when you
4 vote on things, only a no vote person can call
5 another question up for a vote. So she called
6 the question again, and we revoted and we
7 approved the books 5-3.

514 8 Q. So was the outcome of this meeting approval
9 of the text recommended by the science faculty?

10 A. Yes, it was.

515 11 Q. Well, that leaves another text you
12 mentioned in contention. Do you remember
13 attending any meetings in August relating to
14 Of Pandas?

15 A. I believe there was a meeting sometime,
16 I believe the end of August we had a meeting.

516 17 Q. With that in mind here let me ask you to go
18 to Defendant's Exhibit 30.

19 A. 30?

517 20 Q. Yes. Do you recognize that?

21 A. Yes.

518 22 Q. What is it?

23 A. It's just a memorandum to teachers and
24 board members concerning a curriculum committee
25 meeting scheduled on Friday, August 27th.

519 1 Q. Did you attend this meeting?

2 A. Yes, I did.

520 3 Q. Well, let me ask you, this is a meeting of
4 the board curriculum committee. You haven't
5 attended any meetings of that committee up until
6 this point in 2004. Why are you attending this
7 one?

8 A. Well, the reason I did, I mean I have a
9 capacity as board president to sort of I guess,
10 what's the technical term, ex officio, of all
11 the curriculum committees. So when this came
12 out and I started to hear these rumblings about
13 this, and I believe there was probably a
14 conversation between Dr. Nilsen and myself at
15 some point, I thought that if I could come,
16 maybe I could try to build a consensus or try
17 to help, you know, bring people together and
18 take care of it.

521 19 Q. And you recall attending. Do you recall
20 who was there?

21 A. Well, it was myself and I believe it was
22 Mr. Buckingham, Mrs. Spahr, I believe Jen
23 Miller, I believe Sheila. Well, the curriculum
24 committee, Sheila Harkins, and I believe Casey
25 Brown. There might have been somebody else

1 there, I'm not sure all the people that were
2 there.

522 3 Q. How about administration?

4 A. I believe Dr. Nilsen might have been there,
5 and Mike Baksa is usually -- I mean Mike Baksa,
6 that's what his job is. He's usually always at
7 those meetings.

523 8 Q. Do you remember Mr. Buckingham taking a
9 position on the Of Pandas text at this meeting?

10 A. What I can recall is that he basically
11 still wanted to use it as a supplemental
12 textbook, and --

524 13 Q. Do you recall the science faculty's
14 reaction to that desire on his part?

15 A. Well, they didn't want to use it as a
16 supplemental text. I don't believe they wanted
17 to teach it. I think they still thought it was
18 creationism, and I believe this is, I'm not
19 sure, this might have been the first time that
20 the subject broached of, you know, they didn't
21 want to be sued.

525 22 Q. Well, let me ask you, did Mr. Buckingham
23 attend this whole meeting?

24 A. I think this was the one where he wasn't at
25 the whole meeting.

526 1 Q. Do you recall anything that you said to the
2 teachers and administration after Mr. Buckingham
3 left?

4 A. You know, Bill Buckingham is one person on
5 the board, and not everybody agrees with, always
6 agrees with what he's saying or when.

527 7 Q. Did you think that this meeting produced
8 any progress in terms of your goal of trying to
9 build consensus?

10 A. Well, I think it did. We brought the
11 teachers around to the fact that I believe
12 it was through here that I believe it was this
13 meeting they had about looking at gaps and
14 problems and using, a possibility of using that
15 book as a reference book, but not a textbook.

528 16 Q. Did you come away from this meeting giving
17 any direction to Rich Nilsen or Mike Baksa that
18 related to the curriculum?

19 A. I think, I mean Mike being in the
20 curriculum end of it and being an assistant
21 superintendent, probably he took this
22 information, worked on things from there.

529 23 Q. Well, let me ask you to look at Defendant's
24 Exhibit 44.

25 A. 44? Okay.

530 1 Q. Do you recognize that, Alan?

2 A. It's a memorandum and a draft.

531 3 Q. Do you recall receiving this?

4 A. More than likely. I mean, I'm sure I did.

532 5 Q. Were you surprised when you got this

6 document?

7 A. Was I surprised?

8 MR. HARVEY: Objection, Your Honor. Lack
9 of foundation for that. He just testified that
10 he doesn't remember getting it.

11 MR. GILLEN: Well, look it over, Alan, and
12 see if you did or not.

13 THE COURT: Well, the objection is sustained
14 for the record because he's not sure if he got
15 it.

16 (Brief pause.)

17 THE WITNESS: Okay, the draft was to me,
18 being aware of, yes.

19 BY MR. GILLEN:

533 20 Q. Were you surprised when you received this?

21 A. Surprised?

534 22 Q. Yes. In light of what you had worked out
23 at the August meeting.

24 A. Surprised?

25 (Brief pause.)

535 1 Q. Well, this is what I'm getting at. Look at
2 the first page of Exhibit 44 and focus on what
3 the memo is about.

4 A. The memorandum?

536 5 Q. Yes.

6 A. Okay. It's basically to the board of
7 directors, and it's showing recommended
8 curriculum change for biology that the science
9 department had reviewed.

537 10 Q. Now, look at this document in light of the
11 discussion you just described for the August
12 27th meeting of the board curriculum committee.
13 Did you see them as related?

14 A. Well, they were related, sure. I mean,
15 that's what he had talked about. Mike Baksa
16 went back obviously and worked with the teachers
17 and came up with some sort of draft, a first
18 draft, rough copy or a rough draft of what I
19 believe the science department, reviewed by the
20 science department and what they reviewed, and
21 obviously this was acceptable to them.

538 22 Q. All right. If you look at the first page
23 of Exhibit 44, you'll see that it's addressed
24 to the board of directors. Did you know why it
25 was addressed to the board of directors?

1 A. Basically to the board of directors to keep
2 everybody in the loop on this, let them have the
3 information on this. Instead of just going to
4 the curriculum committee it went to everybody.

539 5 Q. Okay. Was that your idea?

6 A. Was it my idea? I can say in this
7 particular memorandum it was either my idea
8 or Dr. Nilsen or Mike Baksa's idea I'm sure.

540 9 Q. And what was the purpose of addressing it
10 to the board of directors so far as you
11 understood it?

12 A. There again to keep everybody apprised of
13 this. So it wasn't just two or three people,
14 it was everybody that saw this, I mean, and had
15 the time to look at it and take a look at it.

541 16 Q. All right, as we go forward I want to focus
17 right now on the Of Pandas text and how it came
18 into the Dover school system, and I'd ask you to
19 look at Exhibit 48.

20 A. 48?

542 21 Q. 48, and go to the page that has the Bates
22 stamp number 135 in the lower right-hand corner.

23 A. 135?

543 24 Q. Yes.

25 A. Okay.

544 1 Q. Look at the item Roman XIII, heading
2 "Curriculum." Do you see a reference to Pandas
3 there?

4 A. Yes, I do.

545 5 Q. And what does it say?

6 A. "Superintendent has approved a donation of
7 two classroom sets of Of Pandas and People, and
8 they will be used as references."

546 9 Q. Well, let's talk about the donations. Did
10 you have a role in that donation or were you
11 aware of it?

12 A. Yes.

547 13 Q. Tell us how.

14 A. Well, the story goes back again to
15 Mrs. Callahan. She was at another one of the
16 board meetings, I believe at the time what I
17 can recall of this is again complaining about
18 something. She was I believe saying,
19 criticizing because we shouldn't use Pandas and
20 People as we shouldn't spend public money on it.

548 21 Q. Well, at the time of the August meeting
22 were you willing to spend public money on Of
23 Pandas?

24 A. At that time I don't know. It was never
25 brought up.

549 1 Q. Did the board ever consider using public
2 money on Of Pandas?

3 A. It was never considered.

550 4 Q. Did it not get that far?

5 A. It was never brought up for a vote or put
6 on any kind of agenda for us to vote on, no.

551 7 Q. If you look at the portion of Exhibit 48
8 to which I direct your attention, you'll see
9 there are two classroom sets mentioned, 25
10 each. That's a lot different from the 220
11 Mr. Buckingham had sought approval for. Do
12 you know why?

13 A. Well, sure. I mean this is what the
14 teachers said, they didn't have a problem with
15 using the books as a reference. It wouldn't be
16 a textbook. It's not side by side. It's not
17 going to be read or required to be read or
18 anything. It's just a reference book. So I
19 guess because there's two classrooms that have
20 this at the same time, I guess that's why we
21 came up with the possibility of two classroom
22 sets using it at the same time, I mean if
23 anybody wanted to look at it there again.

552 24 Q. Did you have any sense for why your dad
25 volunteered to donate?

1 MR. HARVEY: Your Honor, objection. Lack of
2 foundation that he had any conversation with his
3 father about that.

4 THE COURT: Sustained.

553 5 Q. Did you have any discussion with your dad
6 about why he volunteered?

7 A. We had conversation. There was nothing, I
8 don't remember specifics per se other than the
9 fact, you know, Mrs. Callahan was complaining,
10 my father had previously been a school board
11 member and sat on the board with Mrs. Callahan,
12 so he knew, you know, he knew about
13 Mrs. Callahan, and this was some of the things,
14 from the complaints and things and something
15 take off the table as a political -- I mean, it
16 was always something, this is always political
17 with Mrs. Callahan, trying to make the board
18 look bad.

554 19 Q. At the time that your dad volunteered to
20 donate these books, had he made other donations
21 to the school district?

22 A. Yes, yes. Yes, he had.

555 23 Q. Tell us about those.

24 A. Well, he had, I know he had donated I think
25 a truck full of lumber to the school district

1 already. I believe he also had donated some
2 windows if I'm not mistaken, some windows to the
3 administration office or something along that
4 line, some new windows, and he also, he had
5 offered the school district water fountains,
6 there were brand new water fountains that he had
7 purchased, and he offered them to the school
8 district just for what he paid for them. The
9 district would have saved thousands of dollars
10 if they would have done that.

556 11 Q. Did you tell others that your dad had
12 volunteered to donate the books?

13 A. Yes.

557 14 Q. Did you personally contribute any money
15 to the purchase of the books?

16 A. No, I didn't.

558 17 Q. Prior to this had you ever donated books to
18 the Dover area school district?

19 A. Yes, I have.

559 20 Q. Tell us about that.

21 A. I believe it was around 75, they were new,
22 they were a little like 1st grade, I think 1st
23 or 2nd grade reader books on being a bunny, or
24 I want to be a bunny or something along that
25 line.

560 1 Q. Why did you do that?

2 A. Well, the books I gave to, you know, I
3 didn't have to pay taxpayers money for, I gave
4 it to them and hoped the kids, you know, help
5 them to read. Just improve education. That's
6 why I was there.

561 7 Q. How about Mr. Buckingham? There was a
8 check here that he passed on. Do you know if
9 Mr. Buckingham himself contributed any money to
10 the purchase of the text?

11 A. As far as I know he didn't.

562 12 Q. Did Bill Buckingham give you a check to
13 pass on to your dad?

14 A. Yes, he did.

563 15 Q. Did you understand the check was his funds
16 or someone else's?

17 A. No, that's why I said I don't believe it
18 was his money, because he said these were
19 donations that he had gotten and passed a
20 check on to my father.

564 21 Q. Did you ask Mr. Buckingham who gave him
22 the money?

23 A. No.

565 24 Q. Is there any particular reason you didn't?

25 A. There was no reason to ask. I mean, if

1 people were willing to give money to buy
2 reference books for the school, hey, that's
3 great.

566 4 Q. All right. Let's turn back to the
5 curriculum language. We've looked at the
6 document Mike Baksa sent you reflecting review
7 by the teachers, and I'd ask you to look at
8 Exhibit 46.

9 A. What was that again, I'm sorry?

567 10 Q. 46.

11 A. 46? Okay, 46, yes.

568 12 Q. Do you recognize that document?

13 A. Yes.

569 14 Q. Do you remember receiving it?

15 A. Yes.

570 16 Q. What is it?

17 A. It's basically a memorandum from Mike Baksa
18 to the curriculum committee and myself, excuse
19 me, talking about a board curriculum meeting
20 scheduled for October 7th.

571 21 Q. Did that meeting occur?

22 A. Yes, it did.

572 23 Q. Did you attend?

24 A. Yes, I did.

573 25 Q. Do you know who else attended?

1 A. It was Mike Baksa, Sheila Harkins, Bill
2 Buckingham, and myself.

574 3 Q. Casey Brown, did she attend?

4 A. No, she had called and left a, talked to
5 Mr. Baksa.

575 6 Q. Okay. Did you have an understanding of
7 Casey Brown's position with respect to the
8 activities?

9 A. My understanding was from Mr. Baksa that
10 she couldn't make the meeting and that she was
11 sorry, she couldn't make the meeting, whatever
12 we come up with would be okay with her.

576 13 Q. Again this is now the second meeting of
14 the board curriculum committee that you're
15 attending, although you haven't attended others
16 earlier in the year. What is your purpose in
17 showing up at this meeting?

18 A. It's the same thing. I mean, I'm board
19 president, there's a problem here, I'm --
20 there's some discussion back and forth and I'm
21 trying all I'm trying to do is help. I'm trying
22 to bring some sense is what I'm trying to do.

577 23 Q. Okay. I'd ask you to look at Defendant's
24 Exhibit 50.

25 A. 50?

578 1 Q. And I want to discuss your understanding of
2 these various positions that are mapped out here
3 on this document.

4 A. Okay.

579 5 Q. If you look at the first recommendation
6 under A, with the number 1, attributed to the
7 administration and staff, did you see that as
8 related to the document we've already looked at
9 that Mike Baksa sent you --

10 A. That looks pretty much like what the draft
11 said, yes.

580 12 Q. Now, I want you to look at the language
13 under your name.

14 A. Yes.

581 15 Q. And there's a couple of things I want to
16 ask you about.

17 A. Okay.

582 18 Q. There's no mention of intelligent design
19 there. Why is that?

20 A. Well, basically what I said and what the
21 teachers said I didn't really have a problem
22 with because it mentions other theories of
23 evolution, which ID is another theory.

583 24 Q. Was there -- if you look here at this
25 language you'll see that the teachers' version

1 says gaps. Your says gaps and problem. Was
2 there a specific reason that language is in
3 your version?

4 A. Yes. Yes.

584 5 Q. Tell us about your thinking on that.

6 A. Well, the way I look at it, gaps and
7 problems are sort of two different things.
8 Gaps could be okay, we have evidence for A
9 and we have evidence for C, but we're missing
10 B to connect the two together. So there are
11 the gaps. A problem I would consider what I
12 think I talked about earlier, a problem for say
13 evolutionary theory is that it's statistically
14 impossible for it to happen. That's a problem.
15 That's not a gap. So that's the only reason I
16 thought it would be better and it would enhance
17 the statement.

585 18 Q. Well, let me ask you for your understanding
19 of Mrs. Brown's opinion. How did you see her
20 position reflected on this document, Defendant's
21 Exhibit 50 at A-3, relative to yours. Did you
22 see a big difference?

23 A. There really wasn't, I didn't really see a
24 difference. The only thing I see, you know,
25 what I see is that it was wordier, that's all,

1 and mine was a little more short and the other
2 recommendation was a little bit more short and
3 more concise.

586 4 Q. And how about Mr. Buckingham's version?

5 A. Well, Mr. Buckingham's version basically
6 says the same thing, too, being aware of other
7 theories of evolution, including but not limited
8 to intelligent design, really the only
9 difference between the two as far as I see is
10 that it's saying the words intelligent design.

587 11 Q. Well, let's turn to the next page of
12 Defendant's Exhibit 50 with the Bates stamp
13 number 36 in the lower right-hand corner, and
14 you'll see a handwritten notation there. Do you
15 know why that notation is there?

16 A. Well, we discussed this and went over it,
17 and being that, you know, Mr. Buckingham says we
18 have books, we have the Of Pandas and People
19 book as reference books, and here again
20 intelligent design is a theory, another theory
21 of evolution, and so we just sort of took my
22 statement and just added "including but not
23 limited to intelligent design," which, you know,
24 still is saying the same thing. It just is a
25 little more specific. Like it says those two

1 words, that's basically all it's adding to it.

588 2 Q. Well, in all of these versions there's this
3 use of the term "made aware of" that's being
4 used. Did you have an understanding concerning
5 why that language was used?

6 A. Well, sure, because we weren't going to
7 teach it.

589 8 Q. Why was that?

9 A. Well, teachers had --

10 MR. HARVEY: Your Honor, objection, no
11 foundation as to there was any discussion on
12 this subject, as opposed to his own idea.
13 I mean, if he wants to testify about what his
14 own understanding of that is, that's fine.
15 Without foundation he can't testify about, it's
16 a collective understanding.

17 MR. GILLEN: He's just testified that he was
18 at an August 27th meeting with the teachers in
19 which they voiced objections.

20 THE COURT: You might be a question or two
21 ahead of yourself. I'll sustain the objection
22 on that basis. Why don't you lay a foundation
23 for whatever it is the question was.

24 BY MR. GILLEN:

590 25 Q. I will. Thank you, Your Honor.

1 Mr. Bonsell, we're talking about the use of
2 language "made aware of," and I want you to
3 consider that use of language in contrast to
4 the term "teach," and I wanted to ask you,
5 you've mentioned attending an August 27th, 2004
6 meeting of the board curriculum committee that
7 was attended by teachers. Did you come away
8 from that meeting with an understanding
9 concerning whether the biology teachers at
10 Dover were willing to teach intelligent design?

11 A. My understanding was that they did not want
12 to teach intelligent design.

591 13 Q. Okay. So is that understanding related to
14 the use of the phrase "made aware of" as it
15 appears here in these proposed changes?

16 A. Well, absolutely, yes.

592 17 Q. Tell us your understanding of the
18 relationship.

19 A. Well, again, students will be made aware
20 of gaps and problems and other theories of
21 evolution. They're not going to get into
22 teaching it. You know, it's just going to be
23 basically mentioned.

593 24 Q. Let me ask you this.

25 MR. HARVEY: Objection, Your Honor. Move

1 to strike the last testimony. There was no
2 testimony that he had that understanding as a
3 result of anything in particular, and so it's,
4 the record is quite unclear as to whether that's
5 just his understanding, and if that was clear
6 that would be one thing, but whether that was
7 based on something that was discussed at a
8 meeting.

9 THE COURT: I'll take it as his
10 understanding and I'll overrule the objection.

594 11 Q. And with respect to the use of the term
12 "made aware of," this document is generated
13 in connection with a meeting of the board
14 curriculum committee on October 7th, 2004,
15 is it your understanding that this document
16 and its use of that phrase "made aware of"
17 reflects a consensus that was worked out by
18 the members of the board curriculum committee
19 in attendance at this meeting?

20 A. That was my understanding.

595 21 Q. Okay. Did all the members of the board
22 curriculum committee who were present at this
23 meeting have an opportunity to review curriculum
24 language that reflected this revised entry under
25 your name on Defense Exhibit 50, page 36?

1 A. Yes, I believe from here it was sent out
2 again after this.

596 3 Q. Well, let's look at that process. We're
4 moving towards the October 7th -- October 18th
5 board meeting now, and I want to look at the
6 documents that were generated in preparation for
7 that meeting. With that in mind I'd ask you to
8 look at Defendant's Exhibit 60.

9 A. Sorry, 60?

597 10 Q. 60.

11 A. Okay.

598 12 Q. Do you recognize that document?

13 A. Yes.

599 14 Q. What is it?

15 A. It's basically a memorandum about the,
16 there's another draft of changes to the biology
17 curriculum from the board curriculum
18 committee --

600 19 Q. Okay.

20 A. -- that was sent to all the board
21 directors.

601 22 Q. And I'd ask you to turn to the page of
23 Defendant's Exhibit 60 with the Bates stamp
24 number 18 in the lower right-hand corner.

25 A. Okay.

602 1 Q. Or actually I guess if looked at properly
2 it's the lower left-hand corner, and direct your
3 attention further to the last entry in the
4 column headed "Unit content and concepts."

5 A. Yes.

603 6 Q. Would you read that language for the
7 record?

8 A. "Students will be made aware of
9 gaps/problems in Darwin's theory and of
10 other theories of evolution, including,
11 but not limited to, intelligent design."

604 12 Q. Okay. Is this consistent with the
13 consensus worked out at the October 7th
14 meeting of the board curriculum committee?

15 A. Yes, it is.

605 16 Q. If you look in the right-hand corner of
17 that document, the lowermost entry in the column
18 headed "Materials and resources," you see a
19 reference to Of Pandas?

20 A. Yes.

606 21 Q. Was that discussed at the October 7th
22 meeting of the board curriculum committee?

23 A. Yes. I mean using that only as a
24 reference.

607 25 Q. I'd ask you to turn next to Defendant's

1 Exhibit 61. Do you recognize that document?

2 A. Yes.

608 3 Q. What is it?

4 A. Here again it's a note from Mr. Baksa to
5 the board directors for the recommended change
6 of the biology curriculum from the staff and
7 administration.

609 8 Q. I'd ask you to turn to the page in
9 Defendant's Exhibit 61 with the Bates stamp
10 20 stamped in the lower left-hand corner, and
11 again direct your attention to the lowermost
12 entry in the column headed, "Unit content
13 concepts."

14 A. Yes.

610 15 Q. And I want to ask you did you understand
16 this to be the position of the staff and the
17 administration on the proposed curriculum
18 language?

19 A. Yes.

611 20 Q. I'd like you to look at the column
21 "Materials and resources" and tell me whether
22 you note any difference about this document
23 and the board curriculum committee's proposed
24 curriculum change.

25 A. I believe this one doesn't have the

1 reference Of Pandas and People in it.

612 2 Q. Now, just for the record I want to make
3 clear your understanding as to the differences
4 of these two versions that we've discussed.
5 If you look at 60, the board curriculum
6 committee, where do you see points of diversion
7 from, or divergence from the suggestion of the
8 teachers? What's at issue at this time?

9 A. Well, mainly as far as wording, basically
10 "including but not limited to intelligent
11 design," I mean that's the wording that's not
12 in this version. That's in the other version.

613 13 Q. Well, look at the teachers' --

14 A. And gaps, slash, I mean the problems aren't
15 in there. It just says gaps.

614 16 Q. Okay, and then how about with respect to
17 the listing of reference material?

18 A. Then the reference is not included also.

615 19 Q. Okay.

20 A. Reference book.

616 21 Q. Okay. If you look at these two memos,
22 Alan, they're dated October 13th, and I want
23 to focus your attention on the period between
24 October 13th and the board meeting on October
25 18th, 2004. Did you do anything in your

1 capacity as board president that was designed
2 to address the conflict between these versions
3 in the period between October 13th and October
4 18th?

5 A. What I can remember is that I believe I
6 talked to Dr. Nilsen concerning trying to get
7 this worked out, because I wanted everybody to
8 get together on this if this was possible to do.
9 That was my objective as board president, and I
10 believe because the concern was again teaching
11 ID or teaching origins, that type of thing, I
12 said what about coming up with something that,
13 possibly putting in a note or something that
14 origins won't be taught.

617 15 Q. Do you remember suggesting that to Rich
16 Nilsen?

17 A. To go and see, yeah, trying to come up with
18 something like that to be put in that we could
19 come up with something that we could get
20 everybody together on.

618 21 Q. Did there come a time when you had reason
22 to believe that your effort to create a
23 consensus had produced some results?

24 A. Yes, I believe after this there is another
25 draft that came about.

619 1 Q. With that in mind I'd ask you to look at
2 Defendant's Exhibit 68.

3 A. 68?

620 4 Q. Do you recognize that document, Alan?

5 A. Yes. Yes, I do.

621 6 Q. Okay, what is it?

7 A. This is another of the drafts for the
8 curriculum, a memorandum from Mike Baksa to
9 the board, attached is a second draft for
10 recommended changes to the biology curriculum
11 for the administration and staff.

622 12 Q. And I'd ask you to direct your attention to
13 the portion of Defendant's Exhibit 68 with the
14 Bates stamped number 22 in the lower left-hand
15 corner.

16 A. Yes.

623 17 Q. And just tell me what differences do you
18 note between this document and the two versions
19 of the curriculum change that we have looked at
20 thus far?

21 A. Well, now we have the Pandas as a reference
22 book. The teachers, administration, put the
23 reference book in this draft as using it as a
24 reference book that they didn't have before,
25 and they also added problems to the concepts and

1 added a note at the bottom that origins is life
2 is not taught.

624 3 Q. And what was your purpose in suggesting
4 that note?

5 A. Well --

6 MR. HARVEY: Objection, Your Honor. There's
7 been no testimony that he did suggest that note.

8 MR. GILLEN: He just testified that he
9 suggested a note.

10 MR. HARVEY: Perhaps a misstep, I don't
11 believe that's the case.

12 THE COURT: I didn't hear that testimony.
13 I thought that the questions went to the fact
14 that this was received as a compromise from the
15 administration and staff. I think I missed
16 that, too.

17 MR. GILLEN: Well, it's understandable, but
18 let me go back for a second and clarify if
19 needed.

20 BY MR. GILLEN:

625 21 Q. Alan, the two memos that we looked at
22 earlier, Defendant's Exhibit 60 and 61, are
23 dated October 13th, 2004. Did you do anything
24 in the period between that date, October 13th,
25 2004, and the board meeting held on October

1 18th, 2004 in an effort to reconcile the
2 conflict between the two proposed curriculum
3 changes?

4 A. Like I said --

5 THE COURT: That was asked and answered.
6 I understood the answer to that question.
7 That precise question was asked, and he gave
8 a general answer that he continued to try to
9 move them towards a consensus. The objection by
10 Mr. Harvey went to the fact that there was no
11 specific question on whether Exhibit 68 was his
12 product, because by its --

13 MR. GILLEN: It's not his product, Your
14 Honor.

15 THE COURT: Well, that's what the question
16 sounded like, and that it's his language.

17 BY MR. GILLEN:

626 18 Q. Okay, let me ask you, Alan, looking at
19 Defendant's Exhibit 68 and the note you have
20 just read, did you suggest this language?

21 A. Well, the origins of life, the origin of
22 life will not be taught was something that was
23 suggested, that I suggested, you know, go back
24 to the teachers and see if that could be used
25 or not as a, you know, as a way of bringing the

1 teachers in.

627 2 Q. Okay, and what was your purpose in
3 suggesting that language? How did you think
4 it might satisfy the teachers?

5 A. Well, again two things, because they're
6 still saying about, you know, creationism and
7 ID are the same thing and I didn't want to teach
8 it, that would take care of all that because
9 origins of life is not taught.

628 10 Q. Well, how do you see that relating to their
11 objections concerning teaching intelligent
12 design?

13 A. Well, intelligent design deals with the
14 origins of life. So it won't be taught, so
15 they won't have to worry about it.

629 16 Q. Let me ask you, as we lead up now into the
17 October 18th board meeting, did you call any
18 board members to discuss these conflicting
19 versions?

20 A. Leading up to the --

630 21 Q. Yes, in this period between October 13th,
22 2004 and October 18th did you call any board
23 members with the concern about this conflict?

24 A. Yes, I did.

631 25 Q. Tell us who you called.

1 A. I called Mrs. Casey Brown.

632 2 Q. Why did you call her?

3 A. Well, a couple of reasons. One is I called
4 her because she is on the board curriculum
5 committee and didn't make it to the meeting.
6 I wanted to make sure she got everything, she
7 looked at it, she was okay with that, because it
8 was my understanding per our conversation that
9 she was. I spoke to her, you know, how did Jeff
10 Brown feel about this, and my understanding was
11 she didn't know --

12 MR. HARVEY: Objection, Your Honor.
13 Hearsay. He was about to testify --

14 MR. GILLEN: He's testifying to his
15 understanding he got from a telephone
16 conversation. I mean --

17 THE COURT: No, that was a direct quote.
18 I'll sustain the objection. Strike the hearsay
19 reference to what Mr. Brown said.

20 MR. GILLEN: Did you ask Casey --

21 THE WITNESS: Well -- I'm sorry, go ahead.

22 THE COURT: Don't respond to an objection
23 and try to explain an answer.

24 THE WITNESS: I'm sorry.

25 THE COURT: Wait until he asks a question

1 and then you answer the question, please.

2 BY MR. GILLEN:

633 3 Q. Thank you, Your Honor. Did you say
4 anything else to Casey Brown related to her
5 husband?

6 A. I asked her to have him call me.

634 7 Q. Did he ever call you?

8 A. He never did.

635 9 Q. Okay. Let's look at the October 18th, 2004
10 board meeting.

11 THE COURT: Any time you have a break point,
12 too, Mr. Gillen, you can -- I don't want to stop
13 you in the middle --

14 MR. GILLEN: It's actually a logical point,
15 judge.

16 THE COURT: All right, why don't we, because
17 we've been after it for some time, we took a
18 rather early break, we'll break now. We'll
19 return at 1:20 and pick up the direct
20 examination by Mr. Gillen at that time. We'll
21 be in recess until 1:20.

22 MR. GILLEN: Thank you, Your Honor.

23 (Recess taken at 12:00 p.m. End of morning
24 session.)

25

1 Tammy Kitzmiller, et al. vs. Dover Schools

2 4:04-CV-02688

3 Trial Day 18, Morning Session

4 31 October 2005

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

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s/ Wesley J. Armstrong

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Wesley J. Armstrong

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Registered Merit Reporter

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