

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

1	TAMMY J. KITZMILLER, et al.,	:	
2		:	
3	Plaintiffs	:	
4	vs.	:	Case Number
5		:	4:04-CV-02688
6	DOVER AREA SCHOOL DISTRICT;	:	
7	DOVER AREA SCHOOL DISTRICT	:	
8	BOARD OF DIRECTORS,	:	
9	Defendants	:	

AFTERNOON SESSION

TRANSCRIPT OF PROCEEDINGS  
OF BENCH TRIAL

Before: HONORABLE JOHN E. JONES, III

Date : November 2, 2005

Place : Courtroom Number 2, 9th Floor  
Federal Building  
228 Walnut Street  
Harrisburg, Pennsylvania

COUNSEL PRESENT:

ERIC J. ROTHSCHILD, ESQ.  
WITOLD J. WALCZAK, ESQ.  
THOMAS B. SCHMIDT, III, ESQ.

For - Plaintiffs

PATRICK T. GILLEN, ESQ.  
RICHARD THOMPSON, ESQ.

For - Defendants

Lori A. Shuey, RPR, CRR  
U.S. Official Court Reporter

I N D E X

WITNESSES

<u>For - Defendants:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Michael Baksa	7	41		

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1           THE COURT: Good afternoon. Mr. Gillen,  
2 just to clarify, because Liz mentioned to me that we  
3 may need to just clarify, what I was saying was simply  
4 that we'll continue to roll through the testimony, if  
5 this works for everybody, and we will hopefully  
6 complete the testimony tomorrow. Worst case would be  
7 Friday morning.

8           At the conclusion of all the testimony, we  
9 would then argue admissibility on the remaining  
10 exhibits, which consists of the articles, I think. I  
11 don't think we have anything else. So that would be  
12 Friday, in any event. Even if you finish the  
13 testimony tomorrow, it seems like that's an argument  
14 best left for Friday.

15           MR. GILLEN: Okay.

16           THE COURT: And then have closings after  
17 that. Now, I would intend, consistent with our  
18 discussion, to alert everybody before we depart on  
19 Friday of those areas that I would like you to play  
20 some emphasis on in your submissions. I don't want  
21 to, by doing that, usurp the format that we talked  
22 about before or attempt to have you overemphasize  
23 something, but just simply have you do that.

24           And then it occurred to me that if, in fact,  
25 having received your submissions, we need to have

1 further dialogue, we could even do that by telephone  
2 argument or by some other mechanism that doesn't  
3 necessarily have you come in. I'm not convinced that  
4 we'll need to do that, but we can talk about that.  
5 But in any event, that's not for today. So does that  
6 clarify what you need?

7 MR. GILLEN: Yes, it does. Thank you, Your  
8 Honor.

9 MR. ROTHSCHILD: Just a couple other loose  
10 ends. We still have to present those parts of the  
11 demonstrative exhibits that we think should be  
12 introduced into evidence as opposed to just being --

13 THE COURT: Yes, okay.

14 MR. ROTHSCHILD: And also we have the issue  
15 of whether Dr. Forrest's reports and the exhibits that  
16 she did not testify about would come into the record  
17 for the purposes of her admissibility, and that's, I  
18 think, a loose end we still have.

19 MR. GILLEN: Sure. And on that limited  
20 point, the Forrest materials, with the understanding I  
21 believe we've reached, that it's for the limited  
22 purpose of demonstrating her qualifications and the  
23 basis for her opinion, I have no objection to them.

24 THE COURT: All right. Why don't you put  
25 your heads together at the break, and, in addition to

1 the articles and the demonstrative exhibits, make sure  
2 there's nothing else so that we don't have a surprise  
3 on one side or the other. And then you can alert me  
4 if there are other things. I'll assume that that  
5 settles the Forrest --

6 MR. ROTHSCHILD: Just to be clear, that's  
7 her reports and the exhibits that she refers to in her  
8 reports but did not testify about coming in solely for  
9 the admissibility issue, not as substantive evidence.

10 MR. GILLEN: You know what, let me take it  
11 up later.

12 THE COURT: I think you want to talk about  
13 that. I don't want you to concede a point that you  
14 haven't had an opportunity to talk to co-counsel  
15 about. So it seems to me then, you know, at worst,  
16 we'll have the Forrest report and the ancillary  
17 exhibits, which are really the articles that she  
18 referred to, and other publications in her report.  
19 We'll have the various York newspaper articles, and  
20 we'll have the demonstrative exhibits. We don't have  
21 an agreement on the demonstrative exhibits?

22 MR. GILLEN: I think we have an agreement in  
23 principle, it's just the specifics that need to be  
24 discussed, and I'm waiting for my colleague to return,  
25 who is better situated to address it.

1 THE COURT: Suffice it to say, though, then  
2 on Friday -- and alert me if you have other areas just  
3 so I'm prepared for those, too, and alert each other  
4 so that no one is sandbagged on that. But on Friday  
5 then, we'll take that, we'll take the evidentiary  
6 arguments in a bundle. I'll rule on those, and then  
7 we'll roll into the closings after that. Does that  
8 make sense?

9 MR. GILLEN: Yes.

10 THE COURT: And we don't have to do that  
11 before, it seems to me, Friday. So in answer to part  
12 of your question I think that you posed to Liz at the  
13 break, Mr. Gillen, you don't have to be prepared to do  
14 that tomorrow. It looks to me like tomorrow, in any  
15 event, will be all testimony.

16 MR. GILLEN: Okay. And, Your Honor, as I  
17 understand it, on the newspaper articles, your focus  
18 on Friday will be on the admissibility issue, leaving  
19 the effect --

20 THE COURT: Absolutely, absolutely. It's  
21 admissibility only. It's a limited argument. And one  
22 of the things I'm going to ask you to pay some  
23 attention to in your briefs would be the further  
24 argument, but you do not have to be ready to argue  
25 that on Friday, nor do the plaintiffs' counsel.

1 MR. GILLEN: Thank you, Your Honor.

2 THE COURT: All right? Does that clarify  
3 our status at this point? Poor Mr. Baksa is on the  
4 stand for the third time. Hopefully this is it.  
5 We'll complete your testimony, and you may proceed.

6 MR. GILLEN: Thank you, Your Honor.

7 DIRECT EXAMINATION (cont'd.)

8 BY MR. GILLEN:

9 Q. Mike, I think when we left off last, we were  
10 just through the October 7th board curriculum  
11 committee meeting and were going to move forward. And  
12 with that in mind, I'd ask you to look at Exhibit 51.

13 A. Okay.

14 Q. Do you recognize that document, Mike?

15 A. Yes.

16 Q. Is it a document that you generated?

17 A. Yes.

18 Q. And why did you do that?

19 A. Dr. Nilsen asked that I send the board  
20 curriculum committee's biology language to the  
21 curriculum advisory council for their review.

22 Q. Did district policy require this?

23 A. No.

24 Q. Why did you do it?

25 A. Again, Dr. Nilsen wanted to make sure that

1 we involved the curriculum advisory council and they  
2 had a chance at least to comment on the proposed  
3 changes by the board curriculum committee.

4 Q. And did you receive any feedback from any  
5 members of that committee?

6 A. Yes.

7 Q. And with that in mind, I'd ask you to look  
8 at Defendants' Exhibit 67.

9 A. Okay.

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. What is it?

13 A. This is a summary of the feedback I got from  
14 the curriculum advisory committee.

15 Q. And how did you get that feedback?

16 A. The first item was a phone call and the  
17 second was an e-mail.

18 Q. And do you remember who gave the phone call?

19 A. Mrs. Callahan.

20 Q. And the e-mail?

21 A. Was from a teacher, but I don't remember  
22 which teacher.

23 Q. Okay. Now, as we approach this October 18th  
24 meeting, I want to walk you through a few documents  
25 that are pretty familiar and get your understanding of



1 what was in play here on the night of October 18th,  
2 2004. I'd ask you to look at Defendants' Exhibit 60.

3 MR. ROTHSCHILD: What number was that?

4 MR. GILLEN: 60.

5 THE WITNESS: Okay.

6 BY MR. GILLEN:

7 Q. Do you recognize that document?

8 A. Yes.

9 Q. And what is it?

10 A. It's a memo from me to the board of  
11 directors that informs them of the board curriculum  
12 committee's biology curriculum change.

13 Q. All right. I want you to look through that,  
14 Mike, and give me a sense for what you saw as the  
15 important elements of the board curriculum committee's  
16 version. And with that in mind, I'd ask you to look  
17 at the page with the Bates Stamp Number 18 on it.

18 A. The board had a number of concerns, and the  
19 language that they developed was in answer to those  
20 concerns. The language at the bottom of the unit,  
21 Content and Concepts, Students will be made aware of  
22 gaps or problems in Darwin's theory, that was one of  
23 the board's concerns, and of other theories of  
24 evolution, which is another concern, and with an  
25 example, including, but not limited to, intelligent

1 design. In addition to that, in the materials and  
2 resources section, *Of Pandas and People* is listed as a  
3 reference.

4 Q. Okay. I'd like you to look next at  
5 Defendants' Exhibit 61.

6 A. Okay.

7 Q. Do you recognize that document?

8 A. Yes.

9 Q. What is it?

10 A. That's a memo from me to the board of  
11 directors that has the recommendation from the  
12 administration and the staff for the biology  
13 curriculum change.

14 Q. And am I correct that the board curriculum  
15 committee's version had the designation Roman XI-A?

16 A. Correct.

17 Q. This document you've just referred to has  
18 the designation Roman XI-B?

19 A. Yes.

20 Q. And if you would direct your attention to  
21 the portion of Defendants' Exhibit 1 with Bates Stamp  
22 Number 20. This is Roman XI-B, and I'd ask you to  
23 give us your understanding of the important elements  
24 of the curriculum change from the teachers'  
25 perspective.

1           A.     In the draft from the administration and  
2 teachers, there's language that says, Students will be  
3 made aware of gaps in Darwin's theory and of other  
4 theories of evolution. There is no reference to *Of*  
5 *Pandas and People*.

6           Q.     Looking back at the board curriculum  
7 committee version, do you have an understanding as to  
8 why *Of Pandas* was specifically listed in the reference  
9 portion of that recommended curriculum?

10          A.     My understanding is that the teachers, one  
11 of the things they were worried about was liability,  
12 and Dr. Nilsen included it in there so the book would  
13 be board approved and they wouldn't be questioned or  
14 liable for having that book in the classroom.

15          Q.     Okay. If you look at the cover memos for  
16 both of these exhibits, you'll see they're dated  
17 October 13th. We're leading up to the October 18th  
18 meeting, and I want to ask you, did you, in your  
19 capacity as assistant superintendent, take any steps  
20 that were an effort to reconcile the difference  
21 between these versions?

22          A.     After I received the board curriculum  
23 committee's version, I did meet with the -- I did  
24 share that with the science teachers.

25          Q.     How about, did you get any feedback from

1 members of the board that was designed to address this  
2 tension between the versions?

3 A. Dr. Nilsen, my understanding was that  
4 Dr. Nilsen was in receipt of additional changes from  
5 Mr. Bonsell that specifically included language that,  
6 Note, origins of life will not -- is not taught. And  
7 I believe I received that on the 18th.

8 Q. All right. Let me ask you to look at  
9 Defendants' Exhibit 68.

10 A. Okay.

11 Q. Do you recognize that document, Mike?

12 A. Yes.

13 Q. What is it?

14 A. This is a second draft from the  
15 administration and staff that I worked out with the  
16 staff during their lunchtime on the day of the 18th.

17 MR. GILLEN: Excuse me, Your Honor.

18 BY MR. GILLEN:

19 Q. And I'd ask you to turn to that portion of  
20 Defendants' Exhibit 68 with the Bates Stamp Number 22  
21 in it.

22 A. Okay.

23 Q. And looking at that, Mike, would you  
24 identify the points at which this document diverts  
25 from the two we've spoken about thus far?

1           A.     The language included in the curriculum  
2 draft here includes, Students will be made aware of  
3 gaps or problems in Darwin's theory, so it adds  
4 problems from their original proposal, and of other  
5 theories of evolution. It includes the note, The  
6 origins of life is not taught, which was Mr. Bonsell's  
7 suggestion. And it also includes the reference *Of*  
8 *Pandas and People* in the materials and resources.

9           Q.     Okay. You've mentioned that this document  
10 was generated in the lead-up to the October 18th  
11 meeting, and I want to talk to you about that next.  
12 Do you recall the evening of that meeting?

13          A.     Yes.

14          Q.     And did you provide copies of all three of  
15 these documents in connection with that meeting?

16          A.     To the board, yes.

17          Q.     Okay. Do you remember speaking with board  
18 members about these documents and the position of the  
19 administration in connection with that October 18th  
20 meeting?

21          A.     Yes.

22          Q.     What did you say?

23          A.     I informed the board that the first  
24 recommendation from the teachers would be XI-B and  
25 that if the board was -- if that didn't answer the

1 board's concerns, the teachers were willing to submit  
2 XI-C as a compromise for curriculum language.

3 Q. Do you recall conveying your understanding  
4 of teacher concerns to the board at that time?

5 A. Right, that the teachers were concerned  
6 about the mention of intelligent design, and no draft  
7 that would have that in would be acceptable to them.  
8 And they stressed that it was important that the  
9 teachers be on board with the curriculum language.

10 Q. Do you recall any concern about the  
11 requirement of teaching intelligent design that was  
12 expressed by the teachers?

13 A. I believe that -- my understanding is that  
14 teachers felt that the inclusion of the language in  
15 the curriculum would lead them to have to teach it.  
16 If the language is in there, then it meant they had to  
17 teach it.

18 Q. Do you recall a board member trying to  
19 address that concern?

20 A. I believe that's what Mr. Bonsell was doing  
21 by putting that note in there that the origins of life  
22 is not taught.

23 Q. Let's look at the board meeting and as it  
24 began, the public comment. Do you remember anyone  
25 speaking at the board meeting during the public

1 comment session -- section of the meeting?

2 A. Mrs. Spahr and Mrs. Miller I remember  
3 talking.

4 Q. And how did you understand their position as  
5 a result of that statement?

6 A. I think both Bert and Jen were recommending  
7 against the board's version, XI-A, and they were  
8 recommending B or C in its place and spoke against  
9 including intelligent design being included in any  
10 curriculum change.

11 Q. And did you make a recommendation?

12 A. Yes.

13 Q. And what was that?

14 A. Our first recommendation was for B, and if  
15 that wasn't acceptable, didn't answer the board's  
16 concerns, then C would be the second administrative  
17 and staff recommendation.

18 Q. And why did you do that?

19 A. We were trying to address the board's  
20 concerns, and we felt that really C did address the  
21 concerns that the board had expressed to the teachers,  
22 and if the teachers were willing to make these  
23 compromises with the language that they included in C,  
24 that we felt that should address the board's concerns  
25 sufficiently.

1 Q. Okay. And in terms of the discussion, did  
2 you make that clear at the meeting?

3 A. Dr. Nilsen asked me to speak on behalf of  
4 the administration and give our recommendation to the  
5 board, and at the meeting I did recommend B, and if  
6 not B, C.

7 Q. And we're speaking about a curriculum change  
8 here. Is there a specific reason that you took the  
9 position you did at this meeting?

10 A. Well, being responsible for curriculum, it  
11 would be my position, along with the staff, to make  
12 any recommendations to the board.

13 Q. Okay. And how about follow-through on any  
14 curriculum change, did you think that your position  
15 was designed to foster that?

16 A. Can you ask that again?

17 Q. You've taken a position on versions that you  
18 think are acceptable, and I'm asking you, do you think  
19 that's one that was designed to ease implementation or  
20 not?

21 A. Yes.

22 Q. And how is that, Mike?

23 A. With the teachers recommending B and  
24 possibly -- and if not B, C, the teachers had to  
25 implement whatever the language is going to be. So if



1 they had concerns about not being sure about how to  
2 implement language that included intelligent design,  
3 they were okay with the language that they proposed in  
4 C to be able to implement that in their classrooms,  
5 but they were very concerned about and didn't know how  
6 they would implement language that included  
7 intelligent design.

8 Q. Well, let's look at the portion of the  
9 meeting that involves the voting on the agenda item.  
10 Do you recall that portion of this meeting?

11 A. Yes.

12 Q. And tell us what you remember.

13 A. The proposal was made for -- well,  
14 Mr. Buckingham would have made a motion for A, and  
15 discussion followed after that. I remember  
16 Mr. Wenrich making a lot of amendments to the motion,  
17 all of which tried to exclude the language that  
18 included intelligent design and those being defeated.  
19 At one point I remember -- I think it was Mr. Bonsell  
20 that suggested the note origins of life be moved from  
21 C and attached to A, and that was done. And then I  
22 believe A with that attachment, that amendment, was  
23 passed.

24 Q. All right. Do you recall any discussion  
25 after the curriculum motion by Mr. Bonsell was made?

1 I mean the motion to amend that you just described.

2 A. Do I recall any discussion about that?

3 Q. Any specific discussion about that at that  
4 time.

5 A. No.

6 Q. Am I correct that his motion provided the  
7 basis for the final curriculum change as adopted that  
8 evening?

9 A. Yes.

10 Q. So it was worked out on the night of this  
11 board meeting?

12 A. Yes.

13 Q. We've got a board curriculum change that's  
14 been voted on on October 18th. What happened next in  
15 terms of implementation of that?

16 A. Then Dr. Nilsen directed me to come up with  
17 a statement that we could use to implement the  
18 curriculum change.

19 Q. And with that in mind, I'd ask you to look  
20 at Defendants' Exhibit 65.

21 A. Okay.

22 Q. Do you recognize that?

23 A. Yes.

24 Q. What is it?

25 A. This is a draft of the statement that I

1 prepared and sent to the board of directors.

2 Q. And you say you prepared it. What did you  
3 use as the basis for the statement?

4 A. The concerns that the board had expressed to  
5 me earlier and to the teachers.

6 Q. Okay. Let's look a little more specifically  
7 at some elements of this statement. If you look at  
8 the first indented paragraph there, you'll see it  
9 begins, Darwin's theory of evolution continues to be  
10 the dominant scientific explanation for the origins of  
11 the species. The state standards require students to  
12 learn about the theory of evolution and to take a  
13 standardized test of which evolution is a part. Did  
14 you draft that language, Mike?

15 A. Yes.

16 Q. What was your purpose in doing so?

17 A. My purpose was to make it clear that  
18 Darwin's theory is taught, that the state standards  
19 require it, and that students will eventually be  
20 tested on this, to make sure that Darwin is mentioned  
21 first.

22 Q. Okay. If you look at the second paragraph,  
23 there's language in there describing intelligent  
24 design as a theory. And I want to ask you, when you  
25 drafted this statement, Mike, did you believe that

1 intelligent design was a religious theory?

2 A. No.

3 Q. And what was the basis for your  
4 understanding?

5 A. Just reading *Of Pandas and People*, I didn't  
6 see that making a religious argument.

7 Q. And then if you look at the last paragraph  
8 of the statement, it talks about the school leaving  
9 the discussion of origins of life up to individual  
10 students and their families. Did you put that  
11 language in there?

12 A. Yes.

13 Q. And why did you do that?

14 A. That really came from my discussions with  
15 the teachers. I remember them saying that that's what  
16 they had done in the past, so I included it in this  
17 draft.

18 Q. Did you understand this language to mean  
19 that they would not be teaching intelligent design?

20 A. Yes.

21 Q. What happened next relating to this  
22 statement? Did there come a time when you came to  
23 understand that teachers objected to being identified  
24 with the curriculum change?

25 A. Yes. The teachers sent me a request to have

1 their names removed from the new biology -- the change  
2 that had been made to the biology curriculum.

3 Q. And with that in mind, Mike, I'd ask you to  
4 look at Defendants' Exhibit 81.

5 A. Okay.

6 Q. Do you recognize that?

7 A. Yes.

8 Q. And what is it?

9 A. That's a request from the science teachers  
10 to have their names removed.

11 Q. And based on this, did you have an  
12 understanding for why the teachers wanted their names  
13 removed?

14 A. They objected to the inclusion -- they did  
15 not agree to having intelligent design in the  
16 curriculum and then they didn't want their names on it  
17 to look like they wrote that or authored it.

18 Q. And did you do anything as a result of  
19 receiving this document?

20 A. I removed their names from the biology  
21 curriculum.

22 Q. And why did you do that?

23 A. Because they asked me to.

24 Q. I want to ask you a few questions about  
25 reporting on the curriculum change in this period

1 after October 18th. Did you have any discussions with  
2 reporters about the impact of the curriculum change  
3 after the October 18th meeting?

4 A. Yes.

5 Q. And who were those reporters?

6 A. Heidi Bernhard-Bubb and Joe Maldonado.

7 Q. And what was the nature of the information  
8 you gave them? Let's start with Ms. Bubb first.

9 A. I remember Heidi inquiring about what the  
10 nature of the change -- you know, what does it mean  
11 now, this curriculum language has been passed and  
12 what's the nature of that. And I explained to her  
13 that we would be developing that with the teachers,  
14 but I'm envisioning that what will probably happen is  
15 there will be some mention of intelligent design at  
16 the beginning of the unit and that they'd be  
17 mentioning it and not teaching it.

18 And I remember Heidi, you know, laughing  
19 when I made that distinction saying, aren't you just  
20 playing semantics? I said, no, I said, there's a  
21 difference between mentioning and teaching.

22 Q. Did you have an opportunity to review some  
23 reporting on the curriculum change after that  
24 discussion?

25 A. Read articles?

1 Q. Yes.

2 A. Yes.

3 Q. And did it reflect the information that you  
4 had provided?

5 A. The articles still were reporting that we  
6 were teaching intelligent design or teaching  
7 creationism.

8 Q. How about Mr. Maldonado, do you recall a  
9 similar conversation with him?

10 A. I believe I mentioned -- with Joe I remember  
11 going more closely through the curriculum draft  
12 changes, explaining XI-A, B, and C, but I also  
13 remember talking to Joe about -- saying that, you  
14 know, I think it's going to result in maybe somewhere  
15 down the line we'll be reading a statement but not  
16 teaching it.

17 Q. Did you have an opportunity to review press  
18 accounts by Mr. Maldonado about the impact of the  
19 curriculum change after the discussion you've just  
20 described?

21 A. Yes.

22 Q. And did it reflect the information you had  
23 provided to him?

24 A. Still reported that we were teaching  
25 intelligent design.

1 Q. Did there come a time when it came to your  
2 attention that board members were concerned with the  
3 reporting about the curriculum change?

4 A. Yes.

5 Q. And did you have an understanding about  
6 whether board members wanted any steps to be taken to  
7 address the curriculum change?

8 A. Well, my understanding is that Mr. Bonsell  
9 was concerned with the reporting of teaching  
10 intelligent design, and we said we're not teaching it,  
11 you know, we'll be working out this statement about  
12 mentioning, and that he had talked to Dr. Nilsen about  
13 it and asked that, you know, we address it publicly to  
14 explain to the community exactly what we are intending  
15 and what we're not intending.

16 Q. With that in mind, I'd ask you to look at  
17 Defendants' Exhibit 83.

18 A. Okay.

19 Q. Do you recognize that document?

20 A. Yes.

21 Q. And what is it?

22 A. It's a statement, kind of a press release  
23 about what we're doing in relation to the biology  
24 curriculum change from Mr. Bonsell to Dr. Nilsen.

25 Q. And I'd ask you to look at Defendants'



1 Exhibit 85.

2 A. Okay.

3 Q. Do you recognize that?

4 A. Yes.

5 Q. And what is it?

6 A. It's a note from me to my secretary to send  
7 I guess the latest draft of the statement to all the  
8 science teachers for their review.

9 Q. Since we're focused on the statement, Mike,  
10 I'd ask you to look at Defendants' Exhibit 86.

11 A. Okay.

12 Q. 87.

13 A. Okay.

14 Q. Essentially do us a favor and give us a  
15 quick run, look through 86 to 100. Do you recognize  
16 these documents, Mike?

17 A. Yes.

18 Q. And what are they?

19 A. These are the multiple drafts that were  
20 generated from suggestions from the teachers' review  
21 of the statement and the board's review of the  
22 statement.

23 Q. In this litigation, some attention has been  
24 paid to the word "theory," and I want to ask you, the  
25 word "theory," does it appear in the final version of

1 this statement that's read to students? In the final  
2 version of statements that is read to students, does  
3 the word "theory" appear?

4 A. Could we go to that?

5 Q. Well, I guess you could go to Defendants'  
6 Exhibit 103. Do you recognize that, Mike?

7 A. Yes.

8 Q. And there's an indented portion at the  
9 bottom of the page Bates stamped 49 carrying over to  
10 the page Bates stamped 50, and I'd ask you to look at  
11 that and see if you can identify that as the final  
12 version. Do you recognize that?

13 A. Yes.

14 Q. Okay. If you look at the second paragraph,  
15 the word "theory" is defined as, Theory is defined as  
16 a well-tested explanation that unifies a broad range  
17 of observations. And I want to ask you, do you know  
18 how that definition of theory was included?

19 A. During the process of the teachers' review  
20 of this, I remember Mrs. Miller sent me a note to have  
21 the definition of a theory put in there. And then I  
22 met with Mr. Linker and we went to the back of Miller  
23 and Levine and pulled the definition that was there  
24 and then placed it into the statement.

25 Q. Okay. Now, I'd like you to look back at

1 Defendants' Exhibit 86 again.

2 A. Okay.

3 Q. And I direct your attention to the second  
4 paragraph of the statement language that's in this  
5 draft and to the third sentence which reads,  
6 Individuals may subscribe to other theories of  
7 evolution, including intelligent design. Now, I'd  
8 like you to look at 103 again.

9 A. Okay.

10 Q. If you look at the third paragraph of the  
11 indented statement it reads, Intelligent design is an  
12 explanation of the origins of life that differs from  
13 Darwin's view.

14 Can you tell me how the description of  
15 intelligent design came to be an explanation of the  
16 origin of life as opposed to a theory?

17 A. Well, my original -- in my original draft, I  
18 had included language that said intelligent design is  
19 a theory. And when that was returned to me from the  
20 teachers -- and I believe it was Mrs. Miller doing  
21 some of the review -- theory was changed to  
22 explanation for intelligent design.

23 Q. We've looked at the press release, which is  
24 Defendants' Exhibit 103. Did you play any role in  
25 drafting that press release?

1           A.    No.  Dr. Nilsen would have probably given it  
2 to me to review, but I don't remember editing it or  
3 making any changes to it.

4           Q.    Do you recall the press release issued by  
5 Dr. Nilsen generating a response on the part of the  
6 teachers?

7           A.    Yes.

8           Q.    And with that in mind, I'd ask you to look  
9 at Defendants' Exhibit 106.

10          A.    Okay.

11          Q.    Do you recognize that?

12          A.    Yes.

13          Q.    What is it?

14          A.    That's a note from the teachers, the science  
15 teachers, to Dr. Nilsen expressing their concern with  
16 the press release and the implication that the  
17 teachers were fully supportive of intelligent design.

18          Q.    And did you see this document?

19          A.    Yes.

20          Q.    What was your reaction to it?

21          A.    The language in the -- I thought the  
22 language in the press release accurately portrayed  
23 their involvement in the review of the curriculum  
24 language and in the statement.  I didn't see it in the  
25 light that they were seeing it in.  I thought it

1 fairly portrayed their involvement because they were  
2 involved to an extent. They didn't agree with the  
3 intelligent design language, but they were involved in  
4 helping implement it.

5 Q. Did the administration do anything in  
6 response to this document?

7 A. We met with the teachers.

8 Q. And around when was that meeting?

9 A. November before the Thanksgiving break, I  
10 believe.

11 Q. And who was there?

12 A. The science teachers, Dr. Nilsen, myself,  
13 the association president, Sandy Bowser, association  
14 representatives Brad Neal and Bill Miller.

15 Q. And when you say "association," is that the  
16 teachers' union?

17 A. Yes.

18 Q. And what transpired at that meeting?

19 A. I believe Mr. Miller kind of took the lead  
20 for the teachers and asked Dr. -- expressed concern  
21 that the press release unfairly portrayed the  
22 teachers' involvement in the curriculum change in the  
23 statement and asked Dr. Nilsen to reissue a new press  
24 release and clarify that the teachers weren't  
25 supportive of intelligent design.

1           Q.    Did they take any position on the nature of  
2 their involvement in either the curriculum or --  
3 curriculum change or the statement?

4           A.    They believed -- well, the word I heard for  
5 the first time -- during this whole process, I would  
6 draft something, give it to them for them to review  
7 and edit back to me. But I remember Brad Neal saying  
8 that I had given the statement solely to the teachers  
9 to review for scientific accuracy, which isn't  
10 language that I ever used with them. I just gave it  
11 to them to review. That may have been what they were  
12 doing, but that wasn't what I was -- you know, I  
13 hadn't specifically directed them to do that.

14          Q.    There was some discussion of a request for a  
15 press release. Did that occur?

16          A.    No.

17          Q.    Did you discuss anything else at this  
18 meeting relating to the implementation of the  
19 curriculum change?

20          A.    Yeah. This meeting actually sat on top of  
21 another meeting. I originally had a meeting set up  
22 for the teachers to discuss implementation. So after  
23 Dr. Nilsen talked about the press release, then the  
24 teachers and I moved on to talking about  
25 implementation, how we're going to distribute the

1 books, what we'll do if students opt out, when we're  
2 going to distribute the books, and how long they  
3 might -- students might keep them, and the actual  
4 mechanics of getting them stamped and where we would  
5 place them in the classrooms.

6 Q. What was the tone of this meeting?

7 A. Well, I'd say it was strained because the  
8 teachers were very upset with the press release.

9 Q. Okay. You discussed opting out. How did  
10 that come up?

11 A. That had been -- I remember in discussions  
12 with them my understanding was that we would allow  
13 students to opt out of even other curriculum, health  
14 curriculum that might involve sex education,  
15 dissection in the sciences, and that even in the past,  
16 my understanding was that teachers, if a student  
17 objected to evolution, they'd opt out of that unit.  
18 Although they were responsible for it, they could opt  
19 out of it.

20 Q. Do you recall receiving expressions of  
21 concern from parents relating to the implementation of  
22 this curriculum change?

23 A. Yes, I did receive an e-mail.

24 Q. And with that in mind, I'd ask you to look  
25 back at Defendants' Exhibit 70.

1 A. 70?

2 Q. Yeah. Do you recognize that document?

3 A. Yes.

4 Q. And what is it?

5 A. It's an e-mail from Mrs. Kitzmiller that was  
6 forwarded to me from Mrs. Miller.

7 Q. And did this provide part of the basis for  
8 your decision that the opt-out would apply here?

9 A. Yes. Mrs. Kitzmiller was asking if parents  
10 would be able to allow their children to opt out.

11 Q. Now, when you reached the conclusion that  
12 the opt-out would apply, did you do that based on an  
13 opinion that intelligent design was religious?

14 A. No.

15 Q. Why did you reach the decision that it  
16 applied, the opt-out policy?

17 A. We had allowed students to opt out for other  
18 nonreligious reasons of the curriculum. If parents  
19 felt strongly about it, we would honor the parents'  
20 requests, and so we were going to do the same for ID.

21 Q. If you would, Mike, I'd ask you to look at  
22 Defendants' Exhibits 133, 134, and 135. Do you  
23 recognize those documents, Mike?

24 A. Yes.

25 Q. What are they? Let's look at 133 first.



1 What's that?

2 A. 133 is a letter that I drafted that would be  
3 sent home to parents explaining what we would be  
4 doing, reading the statement and the ability to opt  
5 out of hearing it. 134 is the actual excusal form for  
6 a parent to have their son or daughter opt out. And  
7 135 was another excusal form.

8 Q. And were those documents that you prepared  
9 in connection with allowing the opt-out?

10 A. Yes.

11 Q. Let's turn your attention for a minute to  
12 the reading of the statement. When you were drafting  
13 this statement, did you envision that the  
14 administration would read it?

15 A. No. Initially -- and I remember talking to  
16 the science teachers previously, talking to them  
17 previously when they talked about how they  
18 mentioned -- how they preceded the chapters and what  
19 they talked about with students prior to that. So  
20 initially we thought they would do what they did in  
21 the past and they would speak about it prior to  
22 beginning teaching of evolution as they had in the  
23 past.

24 Q. Okay. Let me ask you to look at Defendants'  
25 Exhibit 138 and 139. Do you recognize those, Mike?

1 A. Yes.

2 Q. And what are they?

3 A. 138 are tentative minutes that Mrs. Spahr  
4 drew up for my meeting with the teachers when we were  
5 talking about how to implement the letters and the  
6 opt-out forms. And 138 also includes suggestions from  
7 Dr. Nilsen on what changes we should make.

8 Q. What was the purpose of these minutes?

9 A. One of the things the teachers were  
10 concerned with was liability. That came up at the  
11 November meeting. So at that meeting we had agreed to  
12 put anything that involved the books or the curriculum  
13 language, the books *Of Pandas and People* or curriculum  
14 language, to put that in writing so that there's a  
15 clear directive from administration that the teachers  
16 were told to do this so that they wouldn't be liable.  
17 So these meetings are a written record of what we  
18 agreed to, what we decided on.

19 Q. I'd ask you to look at Defendants' Exhibit  
20 139 under the heading C and the subheading Number 3.

21 A. Okay.

22 Q. And read that for the record.

23 A. Under C?

24 Q. Yeah.

25 A. Three reads, All students will be

1 responsible for the material and the subject that will  
2 be assessed. Nothing discussed during the student  
3 absence will be assessed.

4 Q. And what was the point of that item?

5 A. Again, I think that's from a parent concern  
6 that if students miss something, would they be tested  
7 on it and then would they be hurt by, you know,  
8 excusing themselves from the classroom and wanted to  
9 be reassured that we agreed that we weren't going to  
10 assess that and students would not be penalized for  
11 opting out and not hearing the statement.

12 Q. Does that item reflect the basis for your  
13 belief that students are not being taught intelligent  
14 design?

15 A. Yes.

16 Q. And how is that?

17 A. Because they're not tested on it afterwards.

18 Q. We've talked about reading a statement and  
19 some opt-out forms. Let me ask you, what was the plan  
20 for the distribution of the letter about the opt-out  
21 and the form?

22 A. Well, at this meeting we had agreed that --  
23 the teachers reviewed the forms, we edited them a  
24 little bit. I produced clean forms for everybody, and  
25 the plan was that the teachers would distribute them

1 and collect them.

2 Q. Did the teachers distribute the letter and  
3 opt-out form?

4 A. No.

5 Q. How did you find out that they did not  
6 distribute those?

7 A. The teachers were to distribute -- I believe  
8 it was on a Friday we had agreed that they would  
9 distribute the opt-out forms to students. And  
10 previously I remember talking to a parent, either  
11 through an e-mail or phone call, and they were  
12 wondering, you know, what are we doing, where is this  
13 opt-out form and when will their child get it.

14 And I think I remember that same day,  
15 Friday, the parent contacting me and saying the  
16 daughter came home and didn't receive any form. So I  
17 called the building principal and asked him to check  
18 into why -- you know, if the forms were distributed.

19 Q. And did you learn whether they had been?

20 A. Yes.

21 Q. And what did you learn?

22 A. That the teachers did not distribute them.

23 Q. And what was your reaction to that?

24 A. Well, prior to that, the teachers had  
25 requested to Dr. Nilsen to not have to read the

1 statement. And they asked for that, and Dr. Nilsen  
2 granted them that. They never informed us that they  
3 were not going to distribute the forms. So we were  
4 under the assumption that students would get the forms  
5 and be able to opt out. So I was -- I really thought  
6 that was a breakdown in communication, that they  
7 should have communicated that to us.

8 And then I also learned that the association  
9 had advised them against it. So what I did is, I  
10 ended up writing a letter to the association stressing  
11 how improper I thought it was that they didn't  
12 communicate and that it was a little bit reckless of  
13 them to put their teachers in a position that might be  
14 judged to be insubordinate.

15 Q. Let me ask you to look at Defendants'  
16 Exhibit 142.

17 A. Okay.

18 Q. Do you recognize that document?

19 A. Yes.

20 Q. What is it?

21 A. This is the -- Dr. Nilsen had drafted  
22 language that we would actually say to the students  
23 when we went in to read the statement.

24 Q. And did the teachers read the statement?

25 A. No.

1 Q. Was the statement read?

2 A. Yes.

3 Q. Who read it?

4 A. Dr. Nilsen and I read the statement.

5 Q. Well, let me tell you, why did you and  
6 Dr. Nilsen go into the class and read the statement?

7 A. Because the teachers didn't want to read the  
8 statement. They didn't want to have anything to do  
9 with it.

10 Q. Was this reading of the statement by  
11 administration what you originally contemplated when  
12 you sought to implement the curriculum change?

13 A. No. Originally we thought the teachers  
14 would do that.

15 Q. At any time did any board member tell you  
16 that they wanted the administration to read the  
17 statement?

18 A. No.

19 Q. Let me ask you, Mike, at some point did you  
20 learn that Dover had received another group of books  
21 that were related to the biology curriculum?

22 A. Yes.

23 Q. And when was that?

24 A. When?

25 Q. Yeah.

1 A. In spring, I believe.

2 Q. Sure. I'm not asking for a specific day.  
3 Sometime in the spring. How did the books come to  
4 your attention?

5 A. I believe Cora Kunkle, the high school  
6 librarian, sent me a notice that she had gotten all  
7 these books, here is the list of them and titles and  
8 what is she to do with them.

9 Q. Do you recall receiving the books?

10 A. Yes. She sent them over to my office.

11 Q. Do you know if the books were reviewed?

12 A. Yes.

13 Q. And who reviewed the books?

14 A. Well, I know Mrs. Harkins picked the books  
15 up from my office, and the board curriculum committee  
16 was advised that the books were available for review.

17 Q. Do you know where the books ended up?

18 A. Yes.

19 Q. Where?

20 A. In the high school library.

21 Q. Do you know the specific areas in the  
22 library where the books were located?

23 A. No. Mrs. Kunkle would have determined where  
24 the books would be placed.

25 Q. Did the board approve the donation of the

1 books for placement in the library collection?

2 A. Yes.

3 Q. Based on what you know as the assistant  
4 superintendent, was the addition of those books to the  
5 library collection consistent with the purpose of the  
6 curriculum change adopted on October 18th, 2004?

7 A. Yes.

8 Q. Did there come a time when you came to know  
9 that the donation of the additional books had an  
10 impact on the statement that was read to students?

11 A. Yes.

12 Q. And what was that effect?

13 A. Dr. Nilsen asked me to include language in  
14 the statement when we read it in June that would  
15 mention that there are other resources in there, in  
16 the library.

17 Q. And did you do that?

18 A. Yes.

19 Q. And was that revised statement read to  
20 students?

21 A. Yes.

22 Q. Mike, do you know what result a student will  
23 get if they go to the catalog of the Dover High School  
24 library and do a search using the term "intelligent  
25 design"?



1 A. Yes.

2 Q. What is the result?

3 A. One book comes up.

4 Q. Do you know the author and title of that  
5 book?

6 A. Yes.

7 Q. Please tell us.

8 A. The author is Robert Pennock, and the title  
9 of the book is *Intelligent Design: Creationism and*  
10 *Its Critics*.

11 MR. GILLEN: I have no further questions  
12 Your Honor.

13 THE COURT: All right, Mr. Gillen. We thank  
14 you. Cross by Mr. Rothschild.

15 CROSS-EXAMINATION

16 BY MR. ROTHSCHILD:

17 Q. Good afternoon, Mr. Baksa.

18 A. Good afternoon.

19 Q. Mr. Baksa, I took your deposition twice in  
20 this case?

21 A. Yes.

22 Q. I'm going to give you copies of each of  
23 those depositions.

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

25 THE COURT: You may.

1 BY MR. ROTHSCHILD:

2 Q. Mr. Baksa, on the subject of the donated  
3 books, you were here when Mrs. Harkins testified.

4 Correct?

5 A. Yes.

6 Q. She testified that those donated books had,  
7 like *Pandas*, been added to the curriculum, but that's  
8 not accurate. Correct?

9 A. *Of Pandas, Of Pandas and People* appears in  
10 the biology curriculum page as a reference. Those  
11 other books do not appear in any curriculum pages.

12 Q. And in the statement that was read to the  
13 students in June, while it refers to other books, it  
14 does not describe what those other books are.

15 Correct?

16 A. Correct.

17 Q. And to the best of your knowledge, those  
18 books are not situated next to or near *Pandas* in the  
19 library. Correct?

20 A. Yeah, I really don't know where they are.  
21 The librarian placed them.

22 Q. So you have no reason to dispute the  
23 proposition that they are not located next to or near  
24 *Pandas*?

25 A. Right, I have no -- I don't know where they

1 are.

2 Q. When Mr. Gillen was asking you questions a  
3 few minutes ago, he emphasized the point that the  
4 statement read to students now calls intelligent  
5 design an explanation, not a theory. Correct?

6 A. Yes.

7 Q. And that was a change from what you had  
8 originally drafted. Correct?

9 A. Yes.

10 Q. And why is that significant?

11 A. I'm not sure I -- that was a change  
12 Mrs. Miller made. She never explained to me why she  
13 made that change.

14 Q. Do you understand it to convey that  
15 intelligent design is, in fact, not a theory as  
16 defined in the statement, a well-tested explanation  
17 that unifies a broad range of observations?

18 A. I'm sorry, could you ask me --

19 Q. Why don't you look at Defendants' Exhibit  
20 103.

21 A. Okay.

22 Q. And that's the board press release?

23 A. Yes.

24 Q. And it includes the version of the statement  
25 that was read in January?

1 A. Yes.

2 Q. And if you look at the second paragraph, it  
3 describes Darwin's theory as a theory, and then it  
4 says, A theory is defined as a well-tested explanation  
5 that unifies a broad range of observations. Correct?

6 A. Yes.

7 Q. And you have no reason to doubt that that's  
8 a good definition of a scientific theory?

9 A. Yes.

10 Q. And then it says, Intelligent design is an  
11 explanation of the origin of life that differs from  
12 Darwin's view. Correct?

13 A. Yes.

14 Q. It does not call intelligent design a  
15 theory. Correct?

16 A. Correct.

17 Q. Which is what you had originally put in the  
18 document?

19 A. Right.

20 Q. So it was your understanding that this was  
21 to represent that intelligent design is not, in fact,  
22 a scientific theory?

23 A. Well, again, that's a change Mrs. Miller  
24 made, and she didn't discuss with me why she made that  
25 change.

1 Q. So you don't have an understanding one way  
2 or the other?

3 A. Right.

4 Q. Do you have an understanding of whether  
5 intelligent design is a theory, a scientific theory?

6 A. The only information I have about  
7 intelligent design is what I -- if it's a scientific  
8 theory or not is what I gleaned from reading *Of Pandas*  
9 *and People*.

10 Q. And do you understand it to be --

11 A. And I think I -- I'm sorry.

12 Q. Go ahead. You should finish.

13 A. And I think I testified in my depositions  
14 with you earlier that, you know, I don't feel  
15 qualified like Dr. Behe or the scientific community to  
16 make a determination on intelligent design, whether  
17 it's -- what its status is as a scientific theory. I  
18 would defer to science teachers and the scientific  
19 community to make that determination.

20 Q. And so you don't have an understanding one  
21 way or the other whether intelligent design is a  
22 well-tested explanation that unifies a broad range of  
23 observations?

24 A. Correct.

25 Q. March 26th, 2003, was the first time you had

1 attended a retreat of the Dover Area School Board.

2 Correct?

3 A. Yes.

4 Q. You had been hired by the board in the fall  
5 of 2002 or to start in the fall of 2002?

6 A. Yes.

7 Q. And that's a decision by the board? That  
8 was a decision by the board to hire you?

9 A. Yes.

10 Q. They decide which administrators to hire?

11 A. Yes.

12 Q. And which to fire?

13 A. Yes.

14 Q. I'm not suggesting anything. Now,  
15 March 26th, 2003, was actually the same day you  
16 attended the retreat at Messiah College. Correct?

17 A. Yes.

18 Q. And you understand that Messiah College is a  
19 religious college. Correct?

20 A. Yes.

21 Q. And the symposium you attended was on the  
22 subject of creationism?

23 A. Yes.

24 Q. You had been sent there on the  
25 recommendation of Dr. Nilsen?

1 A. Yes.

2 Q. But he never told you why he wanted you to  
3 go. Correct?

4 A. Yes.

5 Q. And you didn't ask him?

6 A. That's correct.

7 Q. This is the only conference or lecture or  
8 symposium that he ever sent you to on a specific  
9 scientific topic. Isn't that right?

10 A. On a specific scientific topic, yeah.

11 Q. And this presentation lasted several hours?

12 A. Yes.

13 Q. You took notes?

14 A. Yes.

15 Q. And what you heard was the history of  
16 creationism. Correct?

17 A. History of the controversy on teaching  
18 evolution and other theories alongside Darwin's  
19 evolution.

20 Q. And part of the history of creationism you  
21 heard included a discussion of young earth  
22 creationism. Correct?

23 A. Correct.

24 Q. And you learned that young earth creationism  
25 includes an age that -- includes the proposition that

1 the earth is approximately 6,000 to 10,000 years old?

2 A. Yes.

3 Q. And you understand that that's at odds with  
4 the sort of standard scientific interpretation of the  
5 age of the earth based on the geologic record?

6 A. Yes.

7 Q. And the speaker in this conference on  
8 creationism mentioned Phillip Johnson. Correct?

9 A. Yes.

10 Q. And intelligent design. Correct?

11 A. Yes.

12 Q. And he indicated that Phillip Johnson, what  
13 he stood for was an attack on evolution on common  
14 descent. Correct?

15 A. I'd have to -- just you saying it, I don't  
16 remember.

17 Q. Fair enough.

18 A. I'd have to look at my notes for that.

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

20 THE COURT: You may.

21 BY MR. ROTHSCHILD:

22 Q. Mr. Baksa, Exhibit 284 is a copy of your  
23 handwritten notes from the creationism conference at  
24 Messiah College?

25 A. Correct.



1 Q. And if you could turn to the second page of  
2 your notes on the page Bates stamped 4013. And, Matt,  
3 if you could blow up that very bottom underlined  
4 passage there. And could you read what's said there?

5 A. It says, Phil Johnson, attack on evolution,  
6 common descent.

7 Q. Those are your notes of what was  
8 communicated at the conference?

9 A. Yes.

10 Q. And on the page before, if you turn back,  
11 you have the term -- towards the bottom on sort of the  
12 right-hand side you have Phillip Johnson and  
13 intelligent design. Is that right?

14 A. Do you want me to read all that or --

15 Q. No. I'm just saying you do have notes here  
16 about Phillip Johnson and intelligent design, correct,  
17 down in sort of the right-hand corner?

18 A. The one line with Phillip Johnson says, Ten  
19 years later balanced education struck down, Phillip  
20 Johnson. And then under that I have a note out in the  
21 margin, today, and these are three alternative  
22 explanations or theories that they are putting forth  
23 that exist today, young earth creationists, common  
24 ancestry, and intelligent design.

25 Q. And you understand Phillip Johnson was

1 associated with intelligent design?

2 A. No, actually, I didn't know that.

3 Q. If we could turn back to Page 2 again, you  
4 have, Note, National Science Teachers Association  
5 position on evolution. Is that what you wrote on the  
6 last line?

7 A. Yes.

8 Q. Did you ever get a copy of the National  
9 Science Teachers Association's position on evolution?

10 A. No.

11 Q. In fact, you never investigated, throughout  
12 this whole issue at Dover, starting from this retreat  
13 on forward, you never got materials or investigated  
14 the positions of any of the mainstream scientific or  
15 science education organizations on the issues of  
16 intelligent design or evolution. Correct?

17 A. That's correct.

18 Q. And as far as you know, no one else from the  
19 school board or school administration did either.  
20 Correct?

21 A. Right, as far as I know.

22 Q. Safe to say you went to that retreat on the  
23 evening of March 26, 2003, with creationism on the  
24 brain?

25 A. I believe in my deposition I said I returned

1 from the workshop and went to the retreat.

2 Q. And you had been listening to lectures about  
3 creationism all day, and I assume you were thinking  
4 about it?

5 A. The workshop, later learned -- because I  
6 think I misrepresented and said it was an evening.  
7 Actually, I believe it was 9:00 to 1:00. The retreat  
8 was at 6:00 or 6:30. I believe I would have been  
9 thinking of other things in between that, but  
10 certainly that would have been something that I  
11 attended that morning.

12 Q. Your antenna was up to the issue of  
13 creationism. Would you agree with that?

14 A. I don't have antennas, but --

15 Q. That's not what you told me at your  
16 deposition. (Laughter.)

17 A. I would agree that certainly I learned of  
18 creationism and evolution that day and could  
19 be thinking -- would be thinking about that.

20 Q. Now, at that meeting, as you discussed with  
21 Mr. Gillen, there was an opportunity for each board  
22 member to identify the issues that were important to  
23 them. Correct?

24 A. Correct.

25 Q. And while that happened, Dr. Nilsen took

1 notes?

2 A. Yes.

3 Q. And later he circulated a typed-up version  
4 of those notes. Correct?

5 A. At the retreat or later?

6 Q. Later.

7 A. Later, yes.

8 Q. You received a copy of the typed-up version  
9 of his notes?

10 A. Yes.

11 Q. And so did board members?

12 A. That I don't know.

13 Q. Okay. And you saw those notes fairly  
14 promptly after they were created. Correct?

15 A. Yes.

16 MR. ROTHSCHILD: And, Matt, if you could put  
17 up Exhibit 25, Plaintiffs' Exhibit 25. May I  
18 approach, Your Honor?

19 THE COURT: You may.

20 BY MR. ROTHSCHILD:

21 Q. Mr. Baksa, these are -- Exhibit P25 is, in  
22 fact, the typed-up version of the notes Dr. Nilsen  
23 took?

24 A. Yes.

25 Q. And as you went over with Mr. Gillen, under

1 Mr. Bonsell's name is the word "creationism."

2 Correct?

3 A. Correct.

4 Q. And you also list the issue of American  
5 history. Correct?

6 A. Yes.

7 Q. And that is an area of the curriculum that  
8 Mr. Bonsell has expressed some interest in?

9 A. Yes.

10 Q. You've actually discussed that area with  
11 him?

12 A. Yes.

13 Q. And for this entire set of notes, you never  
14 went to Dr. Nilsen and said there's something you need  
15 to correct here?

16 A. That's correct.

17 Q. About anything on these notes?

18 A. That's correct.

19 Q. Now, after this meeting, you had a  
20 conversation with Mrs. Spahr of the science department  
21 about what a board member said about teaching  
22 evolution. Correct?

23 A. Yes.

24 Q. And that board member was Alan Bonsell.  
25 Correct?

1 A. Yes.

2 Q. And the reason you did that is, you wanted  
3 to give the science department a heads-up about what  
4 the board was saying about a topic taught in science  
5 class. Correct?

6 A. Correct.

7 Q. They deserve that. Right?

8 A. Yes.

9 Q. And you have a lot of respect for  
10 Mrs. Spahr?

11 A. Yes.

12 Q. And Mrs. Miller, the biology teacher, as  
13 well?

14 A. Yes.

15 Q. You recognize that they're the science  
16 education experts in the district?

17 A. Yes.

18 Q. You wouldn't call yourself an expert in  
19 science education?

20 A. Correct.

21 Q. Or Dr. Nilsen?

22 A. Correct.

23 Q. Or anybody on the board. Correct?

24 A. Correct.

25 Q. And you also have confidence that the

1 teachers are acting in the best interests of these  
2 students, these science teachers. Would you agree  
3 with that?

4 A. Yes.

5 Q. And they have continued to act that way  
6 throughout this controversy. Right?

7 A. Yes.

8 Q. Now, you told Mrs. Spahr what Mr. Bonsell  
9 said at the board meeting about the teaching of  
10 evolution. Correct?

11 A. I told Mrs. Spahr that what I heard last  
12 night at the retreat was that Mr. Bonsell was looking  
13 for a 50/50 split with Darwin and some alternative.

14 Q. That's what you told her?

15 A. Yes.

16 Q. And Mr. Bonsell had actually been expressing  
17 concerns about the teaching of evolution to you since  
18 the fall of 2002. Correct?

19 A. Correct.

20 Q. Now, shortly after that conversation with  
21 Mrs. Spahr, you received the memo from Dr. Peterman.  
22 Correct?

23 A. Yes.

24 Q. And why don't we just take a look at that.

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

1 THE COURT: You may.

2 BY MR. ROTHSCHILD:

3 Q. P26 is the memo from Dr. Peterman that you  
4 received on or around April 1st, 2003?

5 A. Yes.

6 Q. And that memo summarizes a conversation that  
7 Dr. Peterman had with Mrs. Spahr?

8 A. Yes.

9 Q. And in that conversation, according to the  
10 memo, Mrs. Spahr reported to Dr. Peterman about the  
11 conversation she had with you. Correct?

12 A. Correct.

13 Q. And what the memo says is that you told  
14 Mrs. Spahr about a board member wanting creationism  
15 taught 50/50 with evolution. Is that right?

16 A. That's what the memo says, right.

17 Q. And when you saw this memo, you didn't talk  
18 to Dr. Peterman about it. Correct?

19 A. No, when I saw this memo, my first  
20 reaction -- I distinctly remember this -- is, that's  
21 not what I said and she got it wrong, nobody is  
22 looking at teaching 50/50 with creationism. I  
23 remember going to Dr. Nilsen and saying, you know,  
24 here's Dr. Peterman jumping the gun again because this  
25 isn't what I talked to Bert Spahr about.



1 Q. But, Mr. Baksa, you didn't go to  
2 Dr. Peterman and talk to her about this. Correct?

3 A. That's correct.

4 Q. You didn't go to her and say, are you sure  
5 that's what you heard? You didn't do that. Right?

6 A. Right.

7 Q. You didn't go to Dr. Peterman and say,  
8 that's not what I told Mrs. Spahr. Right?

9 A. Right. I wouldn't go to Dr. Peterman  
10 because anything else I tell her, she would take or  
11 misinterpret or just do more damage with it. She's  
12 already written a memo which I think mischaracterizes  
13 my conversation with Mrs. Spahr. And I was dealing  
14 with the science teachers, and I was not dealing with  
15 Dr. Peterman on this issue.

16 Q. And you didn't respond to her in writing,  
17 either?

18 A. That's correct.

19 Q. Okay. Well, let's talk about the science  
20 teachers. You didn't talk to Mrs. Spahr about the  
21 memo either, did you?

22 A. That's correct.

23 Q. You didn't go to her and say, look what --  
24 and she received this memo. Correct?

25 A. Yeah.

1 Q. And you didn't go to her and say, Bertha, is  
2 this what you told Dr. Peterman?

3 A. But Mrs. Spahr did believe that. I mean,  
4 Mrs. Spahr did believe that, you know, the board was  
5 looking at teaching creationism from the very moment  
6 early in the fall when I expressed -- we had board  
7 members or Mr. Bonsell had concerns about teaching  
8 evolution, and I told her about Mr. Bonsell's concerns  
9 about carbon-14 dating, species evolution. I believe  
10 from the very beginning Mrs. Spahr mentioned to me  
11 creationism many times.

12 So I wasn't going to convince Mrs. Spahr  
13 that she was wrong in not thinking this. So until --  
14 and it's this whole way through. Until I get  
15 something specific that I could tackle with the  
16 teachers and say, look, this is what they want done  
17 now, how do we address that, until then, I'm just  
18 saying -- you know, before we were talking about  
19 mentioning something, now it's a 50/50 split, I don't  
20 know what that's going to look like, we just might  
21 have to do something in the future.

22 So, no, I did not address any of this with  
23 Mrs. Spahr. I was meeting with Mrs. Spahr all the  
24 time anyway on the issue.

25 Q. That's exactly right, Mr. Baksa. And I know

1 this is difficult, but you went to Mrs. Spahr right  
2 after the retreat --

3 A. Right.

4 Q. -- and talked to her about what  
5 Mr. Bonsell's issues were with the teaching of  
6 evolution, but you didn't go back to her and say, this  
7 isn't what I said to you. It may be what you think is  
8 happening, but it's not what I said to you. You never  
9 did that. Correct?

10 A. That's correct.

11 Q. And you have to admit, Mr. Baksa, it's  
12 pretty unfair to Dr. Peterman to say that Dr. Peterman  
13 is exaggerating and being untruthful if you don't know  
14 what Mrs. Spahr told her. Would you agree with that?  
15 This might be exactly what Mrs. Spahr told  
16 Dr. Peterman. Isn't that right?

17 A. I never thought of it. Mrs. Spahr could  
18 have told her that, yeah.

19 Q. So it's pretty unfair to Dr. Peterman to say  
20 that she's exaggerating or being untruthful in this  
21 memo when you don't know if this isn't exactly what  
22 Mrs. Spahr told her?

23 A. What I would say is fair to Dr. Peterman is  
24 whether Mrs. Spahr did this -- told her that or not,  
25 for Dr. Peterman to just fire off a memo to us to

1 address this without ever having confirmed with me  
2 what did I really tell her, what is the real issue,  
3 what concerns did I hear from the board, you know,  
4 Mrs. -- Dr. Peterman is committing to a memo what  
5 Mrs. Spahr -- supposedly I told Mrs. Spahr.

6 So it's not a conversation I had with  
7 Dr. Peterman, and to me I think it's fair to  
8 characterize Dr. Peterman jumping the gun without  
9 checking to see is this really true. I think that's  
10 fair to characterize it that way.

11 Q. Well, Mr. Baksa, given how much uncertainty  
12 there is about what individuals in this school  
13 community have said over this issue, don't you think  
14 it's a good practice to write down what you've heard?

15 A. As a matter of record, not as a memo to take  
16 action without confirming it.

17 Q. Now, if you look at what's written here,  
18 you've got this 50/50 aspect. That part of it you  
19 agree is right?

20 A. Yes.

21 Q. Alan Bonsell did say something at that board  
22 meeting about -- at that board retreat about teaching  
23 something 50/50 with evolution. Isn't that right?

24 A. Yes.

25 Q. And creationism, the second half of this

1 proposition, is exactly what's reflected in  
2 Dr. Nilsen's notes. Isn't that right?

3 A. Yes.

4 Q. So when you look at that all together, this  
5 may be exactly what you told Mrs. Spahr. Don't you  
6 agree? 50/50, creationism? Sort of all coming  
7 together?

8 A. Honestly, I really remember reacting to this  
9 thinking that Bert or Dr. Peterman, as you pointed  
10 out, that they got it wrong, that that's not what  
11 anybody was advocating. Because the other piece is,  
12 teaching creationism is a non-starter. It's not going  
13 to happen. It's not legal, so it's not -- nobody is  
14 advocating -- I hadn't heard that being advocated.  
15 And if somebody is talking about it, it's not going to  
16 happen.

17 Q. Well, Mr. Baksa, you're not really saying  
18 that Mr. Bonsell didn't talk about teaching  
19 creationism, you just don't remember one way or the  
20 other. Isn't that right?

21 A. Right, I don't remember him talking about it  
22 at the retreat.

23 Q. You don't remember one way or the other?

24 A. Correct.

25 Q. Now, after this retreat, you had further

1 conversations with Mr. Bonsell about his concerns  
2 about the school's teaching of evolution?

3 A. I'm sorry?

4 Q. After this retreat, after this April 1st  
5 memo --

6 A. Yes.

7 Q. -- you had further conversations over the  
8 following months with Mr. Bonsell about his concerns  
9 about the teaching of evolution. Correct?

10 A. Yes.

11 Q. He had conveyed that he had some problems  
12 with the text and the way evolution is taught?

13 A. Well, he didn't -- his concerns with the  
14 text were the presentation of Darwin. Actually, after  
15 the retreat, I had met with Mr. Bonsell and heard his  
16 concerns about the treatment of Darwin in texts prior.  
17 I met with him separately after the retreat to find  
18 out what 50/50 was all about.

19 Q. So he had already expressed concerns about  
20 the text and how it presented Darwin's theory of  
21 evolution. Right?

22 A. Correct.

23 Q. And then you subsequently found out he had  
24 questions about the accuracy of carbon dating.  
25 Correct?

1 A. Yes.

2 Q. And he had some problems with the idea of  
3 speciation. Correct?

4 A. Correct.

5 Q. He was worried that teachers were teaching  
6 bears to whales. Correct?

7 A. He had simply reported to me -- my  
8 understanding is that he had seen a video that was  
9 showing the evolution of a bear into a whale, and he  
10 found that highly improbable or ludicrous to think  
11 that that could happen.

12 Q. Another thing he expressed to you was that  
13 he was concerned that if students were taught Darwin's  
14 theory of evolution, that might conflict with what  
15 they were being taught at home. Correct?

16 A. That's correct.

17 Q. And you understand that to mean what they  
18 were taught about origins from a religious  
19 perspective, don't you, conflict with what they were  
20 taught at home about origins from a religious  
21 perspective?

22 A. I don't understand Mr. Bonsell's concern to  
23 mean that it conflicts with religious beliefs, just  
24 that it would be -- if anybody believed in anything  
25 other than Darwin, that it would conflict with that.

1 But I didn't have an understanding that it was solely  
2 religious beliefs.

3 Q. You're not suggesting that Mr. Bonsell was  
4 talking about a conflict between the scientific  
5 account of evolution taught by Mrs. Miller in biology  
6 class and the scientific account of evolution taught  
7 by parents? That's not what Mr. Bonsell was talking  
8 about, was he?

9 A. I think he was just expressing that parents  
10 and students may have different beliefs. I mean, we  
11 didn't say what those are. He didn't use the word  
12 "religious beliefs," and we didn't talk about  
13 religion.

14 Q. But that's what you understood. Isn't that  
15 right, Mr. Baksa? That's the only thing that makes  
16 sense?

17 A. No, I didn't know -- I can't take away an  
18 understanding that that's what Mr. Bonsell meant from  
19 his conversation with me. Primarily it focused on his  
20 concerns with Darwin, the teaching of -- initially his  
21 concerns of the teachings of the origins of life in  
22 the classroom. And his concern there was that there  
23 might be teachings and beliefs at home that conflicted  
24 with that.

25 But we never talked about those being



1 religious conflicts, and I didn't pursue, you know,  
2 that line of questioning of him to find out further.  
3 It was enough for me to take to the teachers a concern  
4 about origins of life, for us to address that.

5 THE COURT: Mr. Rothschild, at any place you  
6 want to take a break, since I assume you're going to  
7 be in this for a little while --

8 MR. ROTHSCHILD: Just a few more questions,  
9 Your Honor.

10 THE COURT: Okay. That's fine.

11 BY MR. ROTHSCHILD:

12 Q. Now, whatever beliefs at home Mr. Bonsell  
13 was talking about, in this upcoming school year, his  
14 own son was going to be in biology class, right, in  
15 2003? Is that right?

16 A. Yes.

17 Q. So this issue was particularly important to  
18 Mr. Bonsell?

19 A. Because of his son?

20 Q. Because his son would learn something in  
21 biology class that might conflict with what he learns  
22 at home.

23 A. Mr. Bonsell didn't say that to me.

24 Q. You do know his son was going to be taking  
25 the biology class?

1 A. Yes.

2 MR. ROTHSCHILD: This would be a good time  
3 for a break.

4 THE COURT: Let's take a recess here for  
5 about 20 minutes, and then we'll resume with the cross  
6 of Mr. Rothschild. We'll be in recess.

7 (Recess taken.)

8 THE COURT: All right. Mr. Rothschild,  
9 we'll pick up where we left off.

10 BY MR. ROTHSCHILD:

11 Q. Mr. Baksa, in the fall of 2003, you  
12 discussed Mr. Bonsell's concerns about the teaching of  
13 evolution with the teachers. Correct?

14 A. Yes.

15 Q. So that's at least the second time that they  
16 have heard from you that a specific board member has  
17 some pretty serious concerns about how they teach  
18 evolution. Correct?

19 A. The fall of 2003, that's -- we met with  
20 Mr. Bonsell.

21 Q. Before that you told them about his  
22 concerns. Correct?

23 A. Yes, before that.

24 Q. And so that's at least the second time that  
25 you communicated to them that there is an issue with

1 their teaching of evolution. Correct?

2 A. Yes.

3 Q. At least the second time, may have been  
4 more?

5 A. Yes.

6 Q. And you communicated to them, for example,  
7 that Mr. Bonsell had concerns about their teaching the  
8 origins of life. Correct?

9 A. Yes.

10 Q. And you understand that term to mean, as  
11 Mr. Bonsell was using it, the teaching of changes from  
12 species to species. Correct?

13 A. And probably how life began, initiated.

14 Q. Macroevolution?

15 A. Yes.

16 Q. Common ancestry?

17 A. I don't remember Mr. Bonsell talking about  
18 common ancestry.

19 Q. But he did have a concern with the teaching  
20 of macroevolution. Correct?

21 A. Yes.

22 Q. Speciation? He had a concern about teaching  
23 speciation?

24 A. Yes.

25 Q. And you do understand that macroevolution,

1 speciation, are elements of the theory of evolution.

2 Correct?

3 A. Yes.

4 Q. Now, you arranged a meeting with Mr. Bonsell  
5 and the teachers. Correct?

6 A. Yes.

7 Q. And in that meeting, Mrs. Miller explained  
8 how she taught evolution?

9 A. Yes.

10 Q. And one of the things she communicated was  
11 that she does not teach origins of life. Correct?

12 A. Yes.

13 Q. And you understood that to mean that she was  
14 not teaching macroevolution and speciation. Correct?

15 A. Yes.

16 Q. Including that modern man, homo sapiens,  
17 descended from lower creatures. Correct?

18 A. I'm sorry, again?

19 Q. You understood that included within that was  
20 that she was not teaching that modern man, homo  
21 sapiens, had evolved from lower creatures. Correct?

22 A. Yes.

23 Q. And you felt that information seemed to  
24 satisfy Mr. Bonsell?

25 A. Yes.

1 Q. You left that meeting feeling that there had  
2 been some meeting of the minds?

3 A. Very much so.

4 MR. ROTHSCHILD: Matt, could you call up  
5 Defendants' Exhibit 286. May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. ROTHSCHILD:

8 Q. Mr. Baksa, this is a document that  
9 Mr. Gillen asked you about during your direct  
10 testimony. Do you recognize that?

11 A. Yes.

12 Q. Okay. And this is the draft curriculum  
13 change which says that students will be able to  
14 demonstrate awareness of other theories of the origin  
15 of life, including, but not limited to, creationism.  
16 Matt, if you could blow up that left-hand corner.  
17 Correct?

18 A. Yes.

19 Q. And it says students will be able to  
20 demonstrate awareness of creationism, so that would  
21 indicate some form of assessment. Correct?

22 A. That language would indicate that somehow  
23 the teacher would be able to know that the students  
24 have an awareness.

25 Q. And it indicates that there will be a

1 textbook for this unit of the biology curriculum.

2 Correct?

3 A. Yes.

4 Q. Now, this is something that you didn't  
5 produce until -- I think it was September of this  
6 year?

7 A. To counsel?

8 Q. Yes.

9 A. Yes, yes.

10 Q. And when you found it, you turned it over to  
11 him as soon as you saw it. Correct?

12 A. Yes.

13 Q. And you testified, I think it was Friday of  
14 this trial, the first day of your testimony here, that  
15 this is a document from, you think, the fall of 2003,  
16 and you think that because of the other documents you  
17 found it with. Correct?

18 A. Well, I found this document with documents  
19 that were dated in August of that year, so summer,  
20 fall.

21 Q. And you're confident that this is something  
22 that you created?

23 A. Well, as I explained to you prior, when I  
24 found the document, I didn't remember creating the  
25 document, was surprised to see it. I do remember

1 initially Dr. Nilsen giving me language that had  
2 origins of life in it, to look at possibly including  
3 language in a curriculum draft to address any concerns  
4 Mr. Bonsell might have. So I don't remember creating  
5 this document, but I believe I'm the only one who  
6 could create this document physically.

7 Q. And sitting here today, you do remember  
8 getting some kind of curriculum language from  
9 Dr. Nilsen or Mr. Bonsell?

10 A. Not from Mr. Bonsell, from Dr. Nilsen, yes.

11 Q. In fact, you remember him giving you a  
12 document in this form with some handwritten notes on  
13 it. Correct?

14 A. Right.

15 Q. And that may well have been the basis for  
16 what you created here. Right?

17 A. Yes.

18 Q. Because you did not, on your own initiative,  
19 decide to add a unit to the biology curriculum that  
20 included creationism. Correct?

21 A. Well, can I explain the document?

22 Q. Please.

23 A. Okay. I may have included the word  
24 "creationism" in this document. The document, as you  
25 know, was never distributed.

1 Q. I don't know that, but if that's your  
2 testimony.

3 A. I believe it was not because there were  
4 copies that were attached to it yet. And literally  
5 what I did, without reviewing this -- what I believe  
6 happened, without reviewing this with anybody, is, I  
7 simply took the language that normally you would use  
8 in writing curriculum and demonstrate -- you want to  
9 use language that results in some student activity,  
10 took that language, the state standards there, lecture  
11 would simply repeat, textbook would be just repeated  
12 without having a textbook that had creationism to do  
13 this.

14 My thinking, even with this, which is --  
15 from the start is that maybe, to answer some of the  
16 concerns of Mr. Bonsell or other board members, we  
17 would have to mention something, say something, prior  
18 to beginning the unit on evolution. So this would be  
19 consistent with my drafting some language to answer  
20 the concerns of some board members.

21 Q. So it wasn't your own initiative to -- it  
22 wasn't something you thought up on your own to add  
23 this creationism language, you were anticipating the  
24 board's position?

25 A. Well, up to this point, I can only -- you



1 know, not remembering doing that, but up to this  
2 point, I mean, Messiah talked about, you know,  
3 mentioning other theories, creationism, that that  
4 would make for a rich discussion, not teach it, but  
5 mention it. I knew the teachers were mentioning that  
6 already prior to their teaching the theory of  
7 evolution.

8 So it was just -- and I knew Mrs. Spahr  
9 thought this is what Alan was talking about or Alan  
10 wanted in the curriculum. So if language like -- you  
11 know, it's very possible that if language like this  
12 then would be all that was necessary to answer  
13 Mr. Bonsell's concerns, it's likely that I could draft  
14 language like this.

15 Q. You weren't doing this for Mrs. Spahr's  
16 benefit?

17 A. No.

18 Q. You didn't put creationism in because  
19 Mrs. Spahr was thinking that Alan Bonsell wanted  
20 creationism?

21 A. No, I'm only saying that Mrs. Spahr is  
22 thinking that what we're talking about is creationism.

23 Q. But Mrs. Spahr didn't create this, and you  
24 weren't doing this for her. Correct?

25 A. That's correct.

1 Q. You were doing it for another reason which  
2 you can't remember right now?

3 A. Well, I can tell you very clearly I'd be  
4 doing this to address the concerns of a board member.

5 Q. Concerns of Mr. Bonsell?

6 A. Yes.

7 Q. All right. Moving forward to 2004, the  
8 issue of teaching evolution arose again around the  
9 selection of the biology textbook. Correct?

10 A. Yes.

11 MR. ROTHSCHILD: Matt, could you pull up  
12 Plaintiffs' Exhibit 817. May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. ROTHSCHILD:

15 Q. Mr. Baksa, what we've marked as P817 is your  
16 notes of a meeting with Mr. Buckingham about the  
17 biology textbook?

18 A. Correct.

19 Q. And this is where you're listening to him  
20 describe his sort of page-by-page problems with the  
21 book. Correct?

22 A. That's right.

23 Q. And what he's complaining about is that the  
24 textbook addresses things that he considers to be  
25 origins of life. Correct? That's one of the main

1 things he's communicating to you?

2 A. Yes.

3 Q. Okay. He has a problem with, for example,  
4 the mention of common ancestors which you see on Item  
5 7 and 8?

6 A. Yes.

7 Q. And, for example, 8 says, Common descent and  
8 species descend into species?

9 A. Yes.

10 Q. And Mr. Buckingham thinks that's  
11 problematic. Correct?

12 A. Yes.

13 Q. And, again, you do understand that common  
14 ancestry and this descent from one species to another,  
15 that is part of the theory of evolution. Correct?

16 A. Yes.

17 Q. And I think if we look at Item 9, it  
18 indicates, Page 393, he says, It points students to  
19 research the theory of evolution, paren., more, close  
20 paren. That's right?

21 A. Yes.

22 Q. And that was something else that  
23 Mr. Buckingham was pointing out as a problem in the  
24 book?

25 A. Yeah. I'm not really sure what that one is,

1        though.

2            Q.     But you're writing down things he has a  
3        problem with.    Right?

4            A.     Yes.

5            Q.     And one of the things he has a problem with  
6        is that students might research the theory of  
7        evolution more.    Correct?

8            A.     That's what -- yeah.

9            Q.     And from Mr. Buckingham's standpoint, that's  
10       a bad thing?

11           A.     I just know what I -- I knew that -- you  
12       know, my understanding that these are items that he  
13       found, and I tried to capture his objection.    So all I  
14       really have to go on are my notes, for the most part.

15           Q.     Fair enough.    You can put that aside.    Now,  
16       you attended the two meetings in June where the  
17       biology textbook was discussed, the two board  
18       meetings?

19           A.     The board meetings, yes.

20           Q.     And you remember that there were a number of  
21       news articles about those meetings?

22           A.     Yes.

23           Q.     And you read those articles around the time  
24       they were published?

25           A.     I probably did.

1 Q. And they reported about statements made by  
2 board members on the subject of the biology textbook.  
3 Correct?

4 A. Yes.

5 Q. And one of the things the papers report is  
6 that Mr. Buckingham talked about creationism at the  
7 June meetings. Correct?

8 A. Yes.

9 Q. And you remember that. Correct?

10 A. Yes.

11 Q. It was said in the context of discussing the  
12 selection of the biology textbook. Correct?

13 A. I'm pretty sure it was -- I remember  
14 Mrs. Callahan questioning why we weren't moving on the  
15 biology books, and I remember a back-and-forth  
16 exchange with Mr. Buckingham. And I believe somewhere  
17 in there creation, I don't remember the exact context,  
18 but I remember Mr. Buckingham saying creationism.

19 Q. He talked about creationism?

20 A. Yes.

21 Q. So if anyone that attended the June meeting  
22 says that Mr. Buckingham didn't talk about  
23 creationism, you know that's not correct?

24 A. Well, I remember him saying that.

25 Q. Just like the papers reported?

1 A. Correct.

2 Q. They also report that Mr. Buckingham stated  
3 that the biology textbook recommended by the teachers  
4 was laced with Darwinism. And you remember him saying  
5 that, don't you?

6 A. Yes.

7 Q. And they report that Mr. Buckingham stated  
8 that 2,000 years ago a man died on a Cross, can't we  
9 take a stand for Him now, and you know that he said  
10 that, as well. Correct?

11 A. Yep, but what I don't remember is, I don't  
12 remember if that's in the June board meeting.

13 Q. You were at --

14 A. I remember him saying that.

15 Q. You were at the board meeting when  
16 Mr. Buckingham said those words. Correct? You were  
17 present when he said that?

18 A. Yes.

19 Q. Okay. And it could have been at one of the  
20 June meetings as has been reported by the newspapers.  
21 Correct?

22 A. Yes.

23 Q. And as many witnesses have testified at this  
24 trial?

25 A. Yes.

1 Q. You have no reason to dispute that the  
2 statement was made at one of the June meetings?

3 A. Well, I don't remember it. I remember  
4 hearing it, but I can't place it at the June meeting  
5 myself from my memory.

6 Q. You have no reason to place it at the  
7 November meetings, either, do you, on the pledge?

8 A. Well, I don't remember --

9 Q. You have no memory?

10 A. Yeah, I don't remember when it was said.

11 Q. Now, another thing that the papers reported  
12 is that Mr. Buckingham said, This country was founded  
13 on -- was not founded on Muslim beliefs or evolution,  
14 this country was founded on Christianity, and our  
15 students should be taught as such. And you remember  
16 him saying something to that effect, as well, don't  
17 you?

18 A. Yes.

19 Q. And, again, you have no reason to dispute  
20 the newspapers that said this was said in June when  
21 the biology book was being discussed. Right?

22 A. Actually, I forget what I say in my dep,  
23 but --

24 Q. You're testifying, Mr. Baksa. We go to the  
25 dep afterwards.

1           A.    I actually thought he said that not in June,  
2           but that would have been when the under the pledge was  
3           being discussed, I guess that November period.

4           Q.    So your memory today is that Muslim beliefs  
5           and evolution was being discussed not when evolution  
6           was being discussed but in a controversy over the  
7           pledge?

8           A.    No, I don't remember evolution and Muslim  
9           beliefs being tied together. I remember him talking  
10          about -- yeah, I surrendered a document to counsel  
11          that is a phone call from an Afghanistan native of  
12          Dover. And I believe -- I don't think it's dated, but  
13          I believe his concerns about Mr. Buckingham's remark,  
14          what you just said, was during that earlier period.  
15          And I don't remember -- I mean, you have the notes,  
16          but I don't remember in my notes writing anything  
17          about evolution.

18          Q.    Okay. Why don't we turn to Page 79 of your  
19          March deposition.

20          A.    Okay.

21          Q.    Actually, if you look at Page 78, you'll see  
22          that I'm asking you questions about a June 9, 2004  
23          article from the York Daily Record. Do you see that?

24          A.    I'm reading.

25          Q.    Do you see that on Page 78?



1 A. Can I read it?

2 Q. Yeah, sure.

3 A. Okay.

4 Q. I'm asking you about a June 9th article.

5 Right?

6 A. Yep.

7 Q. And then if you go down to Page 79, Line 14,  
8 I ask you, Then the next paragraph he's quoted as  
9 saying -- the "he" being Mr. Buckingham -- This  
10 country wasn't founded on Muslim beliefs or evolution,  
11 this country was founded on Christianity, and our  
12 students should be taught as such. Do you remember  
13 him saying that? You answered: Yes. I asked, What  
14 were the circumstances in which he said that? And you  
15 answered: I don't remember when he said that or the  
16 circumstances. I just remember him saying that and  
17 hearing that.

18 So as of your deposition on March 9th, you  
19 had no memory of when he said that?

20 A. Right, that's correct.

21 Q. The papers also reported that Mr. Buckingham  
22 stated that liberals in black robes were taking away  
23 the rights of Christians in this country.

24 A. Yes.

25 Q. And you remember him saying that, too?

1           A.    Yeah, I think I said I remembered that,  
2    yeah.

3           Q.    Now, after these meetings, two meetings in  
4    June, you had a meeting of the curriculum committee  
5    with the science teachers?

6           A.    Yes.

7           Q.    And that was a meeting that was initiated so  
8    Bill Buckingham could articulate his concerns about  
9    the textbook and how evolution was being taught.  
10   Correct?

11          A.    Yes.

12          Q.    So the teachers were meeting for the second  
13   time in this school year with a board member on the  
14   subject of how they taught evolution?

15          A.    With the whole board curriculum committee.

16          Q.    And this was right after the two meetings in  
17   June where the biology textbook was discussed.  
18   Correct?

19          A.    Yes.

20          Q.    Where you remember Mr. Buckingham talking  
21   about creationism?

22          A.    Yes.

23          Q.    And when he may have said his 2,000 years  
24   ago statement. Right?

25          A.    Yes.

1           Q.    Now, you can't remember any other academic  
2 subject where Dover School Board members have so  
3 directly confronted teachers on an area of curriculum,  
4 can you?

5           A.    Well, just the two that I testified to  
6 before, the family consumer science was a concern of  
7 Mrs. Brown and also the fundamentals of success.

8           Q.    But they weren't meeting with teachers to  
9 discuss the content of how the teachers taught the  
10 subject. Correct? I mean, that wasn't what happened  
11 with those topics. Right?

12          A.    Those topics primarily were whether the  
13 course was -- whether it warranted or not us having  
14 the course.

15          Q.    But there was never any other instance at  
16 Dover where teachers were being questioned so much  
17 about how they taught a specific unit of the subject?

18          A.    I don't remember it.

19          Q.    I mean, in your fairly long career as a  
20 teacher and administrator, you've never seen anything  
21 quite like this, have you, where board members are  
22 directly questioning teachers on multiple occasions  
23 about how they teach a specific area of the  
24 curriculum?

25          A.    I've seen a lot of things, so -- nothing

1 that -- I know that very typically the matter --  
2 matters like sex education, matters like evolution,  
3 typically that those are sensitive subjects for  
4 parents and students, and in any district typically  
5 you might have to address concerns in the teaching of  
6 that. That is typical.

7 Q. But here you've got board members already  
8 twice sitting down with the teachers complaining about  
9 how they teach a specific area of the curriculum.  
10 Correct?

11 A. Well, the complaint isn't what they're --  
12 the board members were actually fine with what they  
13 were teaching. The concern was -- Mr. Buckingham's  
14 concern, for the most part, was the presentation of  
15 Darwin in the book and what the book was saying.  
16 Mr. Bonsell's concern actually was answered by the  
17 teachers when he found out origins of life wasn't  
18 taught.

19 The first meeting included family consumer  
20 science teachers, and, for the most part, teachers  
21 presented their justifications for the books and the  
22 board curriculum committee listened. The second  
23 meeting we now had very specific concerns from  
24 Mr. Buckingham on the biology text and his concerns  
25 with the presentation of evolution there.

1           So that was a little bit -- and we just  
2 had -- the second meeting included just the science  
3 teachers. The family consumer science teachers were  
4 not in that meeting.

5           Q.    And I'm not talking about what I think is an  
6 April or May curriculum meeting, I'm really talking  
7 about Mr. Bonsell sitting down with the teachers in  
8 September and then Mr. Buckingham and the rest of the  
9 curriculum committee sitting down with the teachers in  
10 June and really getting into the details of how  
11 evolution was taught or how evolution is presented in  
12 the textbook.

13          A.    Correct.

14          Q.    You would agree this puts quite a bit of  
15 pressure on the teachers to have to justify how  
16 they're teaching evolution, how they're presenting  
17 evolution to board members in this fashion?

18          A.    Well, it's not unusual, if board members  
19 have questions about a unit of study, to meet with  
20 teachers and have them explain exactly what they do.  
21 I mean, I -- with the family consumer science and the  
22 fundamentals, I mean, I did prepare -- have the  
23 teachers prepare unit outlines and justifications for  
24 that and had the books available for Mrs. Brown to  
25 review.

1           So, you know, it's not unusual to ask the  
2 teachers to do some things so that we can get a clear  
3 explanation of what's going on in the classroom and to  
4 answer board concerns. That's actually a good thing  
5 because that's how you clear things up.

6           Q.    You would agree what happened here with the  
7 subject of evolution put quite a bit of pressure on  
8 the teachers, wouldn't you?

9           A.    Well, the teachers were frustrated in this  
10 aspect, that, you know, they sat down with  
11 Mr. Bonsell, thought they had everything settled,  
12 didn't think there was going to be another concern,  
13 and Mr. Buckingham seemed to bring up the same issues,  
14 and they had to go through all this justification  
15 again.

16           Mrs. Spahr, I believe I have an e-mail from  
17 her where, you know, she's frustrated and venting her  
18 frustration to me having to do this all over again.  
19 In that sense, it was stressful for them that they  
20 continued to have to -- in their minds, continued to  
21 have to explain what they were teaching in classrooms  
22 and why the Miller and Levine book that they want is a  
23 good book for them.

24           Q.    Mr. Baksa, you would agree that there was a  
25 lot of pressure on these teachers, yes or no?

1           A.    Pressure to do what, though?

2           Q.    Pressure about their teaching.  The board  
3 was in their face on this particular subject.  You  
4 would agree there was a lot of pressure on them,  
5 wouldn't you?

6           A.    No, because teaching -- Mr. Buckingham and  
7 Mr. Bonsell were okay with what the teachers were  
8 teaching.  So the --

9           Q.    Is your answer no, Mr. Baksa?

10          A.    The pressure was to justify Miller and  
11 Levine.  I think if they were going to have any  
12 pressure, they wanted to get this book passed, and we  
13 were not able to convince Mr. Buckingham to throw his  
14 support for the book.  But what was going on in the  
15 classroom, even Mr. Buckingham at the June meeting  
16 agreed that, you know, he had no problems with them  
17 teaching change over time within a species.

18          Q.    Everybody was happy with that as long as  
19 they weren't teaching macroevolution?

20          A.    Yes.

21          Q.    Weren't teaching speciation?

22          A.    Yes.

23          Q.    Now, Mrs. Miller did talk about how she  
24 teaches the evolution of Darwin's finches.  Correct?

25          A.    Yes.

1 Q. You understand that those are multiple  
2 species of finches?

3 A. Well --

4 Q. Yes or no?

5 A. I mean, yeah, I guess.

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

7 THE COURT: You may.

8 BY MR. ROTHSCHILD:

9 Q. Mr. Baksa, what I've shown you are  
10 Defendants' Exhibits 19 and 20, which you looked at in  
11 your direct testimony, as well. And am I correct in  
12 understanding that these are notes of the curriculum  
13 committee meeting in the middle of June, 2004?

14 A. That's correct.

15 Q. And on Defendants' Exhibit 19, in addition  
16 to your notes, we have the survey of biology books  
17 used in area schools. Correct?

18 A. Yes.

19 Q. And that's something that -- a document you  
20 prepared? This is a document you prepared?

21 A. Yes.

22 Q. And it was based on research or  
23 investigation that you and your staff did. Correct?

24 A. Yes.

25 Q. Now, this survey of these schools is



1 something that Dr. Nilsen asked you to do. Correct?

2 A. That's what I remember, yes.

3 Q. And you don't know why. Correct?

4 A. Dr. Nilsen did not explain why.

5 Q. And Mr. Gillen asked you why the survey only  
6 includes parochial schools, and you answered that the  
7 teachers had already seen all the books offered by  
8 mainstream publishers, which is what all the local  
9 public schools were using. Does that accurately  
10 capture your testimony?

11 A. Yes.

12 Q. And, of course, you understand that the  
13 public schools are the schools that are required to  
14 abide by the establishment clause of the First  
15 Amendment?

16 A. Yes.

17 Q. And so you and the teachers already knew  
18 what all the alternatives were from the mainstream  
19 publishers that were used by the schools bound by the  
20 First Amendment. Correct? Right?

21 A. Yes.

22 Q. So this was really only a search for books  
23 that did not fall within that universe. Correct?

24 A. Well, in my mind -- and I think I have  
25 testified to this, and I thought about this a little

1 bit more since both depositions -- Dr. Nilsen didn't  
2 tell me why he wanted me to just research these  
3 schools. I did do that. I also researched our  
4 home-schoolers, what books they might use.

5 But this would have come after our  
6 teachers -- and I'm thinking about it now and  
7 answering you. We have Mr. Buckingham's concern with  
8 the Miller and Levine book. We've already, at the May  
9 meeting, presented the justification why we need the  
10 books. And we've already reviewed -- teachers already  
11 did the review of all those mainstream books or books  
12 typically in the public schools.

13 So in my mind, we're looking for --  
14 Mr. Buckingham wants us to look at other books. We're  
15 looking for other books that may address his concerns  
16 with the treatment of Darwinism in the teaching of  
17 evolution. These are the only sources that you would  
18 go to. That's me talking. That's not Dr. Nilsen  
19 making that explanation.

20 Q. And that's exactly right, you already know  
21 all the books used by the public schools. Right?

22 A. Yeah, our teachers would have gotten them  
23 from the mainstream publishers.

24 Q. All the books used by the schools bound by  
25 the First Amendment. Right?

1 A. Yes.

2 Q. And this is a search of parochial schools.

3 Correct?

4 A. Yes.

5 Q. Which are not bound by the First Amendment.

6 Correct?

7 A. I'm taking your word for that. I mean, I  
8 don't think public -- public schools can present  
9 material -- or that private schools could present, in  
10 my mind could present material that public schools  
11 could not.

12 Q. Correct. And similarly, home schools or  
13 home-schoolers are not bound by the establishment  
14 clause of the First Amendment. Right?

15 A. Right.

16 Q. And you looked for books that they used, as  
17 well?

18 A. Yes.

19 Q. Including, you found out, a book that was  
20 published by the Bob Jones University Press. Correct?

21 A. Right.

22 Q. Which you also understand to be a religious  
23 school. Right?

24 A. Yeah.

25 Q. So these were the places you went to look

1 for a book that would satisfy Mr. Buckingham.

2 Correct?

3 A. Yes.

4 Q. Now, Exhibit 19 refers to *Icons of*  
5 *Evolution*, and it looks like Cold Water Media?

6 A. Yes.

7 Q. That's one of the videos that Mr. Buckingham  
8 got from the Discovery Institute. Correct?

9 A. Yes.

10 Q. So we know that this meeting happened after  
11 Mr. Buckingham's communications with the Discovery  
12 Institute. Correct?

13 A. Right.

14 Q. And below that you write, Topic 1, we will  
15 review tape and offer flaws if found around our  
16 content. Correct?

17 A. Right.

18 Q. So what you're indicating here is that the  
19 teaching of evolution in Dover High School would be  
20 revised to include information from this tape.  
21 Correct?

22 A. The teachers -- and I'm not sure -- I think  
23 they did review it prior to this already. And what  
24 we're trying to do at this meeting is come to some  
25 agreement to get the textbook, Miller and Levine. And

1 the conditions that we worked out and the compromises  
2 that we worked out, this was one of those compromises,  
3 that the teachers would go back, look at the tape, if  
4 there's anything that fit their -- the standards or  
5 their specific content, then they would look at  
6 possibly using that information from the tape.

7 Q. They would offer the flaws that were found,  
8 that were presented on this tape. Right?

9 A. Around their specific content.

10 Q. Right.

11 THE COURT: Mr. Rothschild, what's that  
12 exhibit number again?

13 MR. ROTHSCHILD: That's Defendants' Exhibit  
14 19.

15 THE COURT: Thank you.

16 BY MR. ROTHSCHILD:

17 Q. So what they were saying is they would look  
18 at the tape and offer the flaws presented in that tape  
19 around the material on evolution that they already had  
20 from their textbook or their curriculum. Right?

21 A. Yeah. But there is another piece of  
22 information we have. The teachers have already  
23 reviewed the tape. And I remember talking to them,  
24 and I think one of the things that they told me about  
25 is that *Icons* dealt with the origins of life and it

1 didn't deal with the content that they presented in  
2 their class, so we can make that offer to  
3 Mr. Buckingham, but I think the teachers already know  
4 there's no match. So when you say that it would be  
5 used in the curriculum, I think the teachers already  
6 made a determination that it would not be appropriate  
7 and there's no match to use.

8 Q. They didn't say that to Mr. Buckingham at  
9 this meeting?

10 A. No. They agreed to review the tape and --

11 Q. In order to get Mr. Buckingham to approve  
12 the standard biology textbook, they're agreeing to  
13 take this material from the Discovery Institute's  
14 videotape and add it to their curriculum. Right?

15 A. Yes. They were willing to review it to see  
16 if they could do that, right.

17 Q. Now, at this time did you know anything  
18 about the Discovery Institute?

19 A. No.

20 Q. Mr. Buckingham apparently did?

21 A. Well, I mean, I got the materials from them  
22 and I heard they're from the Discovery Institute, but  
23 I don't think I had any more information than that.

24 Q. Really, the only person there who had  
25 information about the Discovery Institute was

1 Mr. Buckingham?

2 A. I believe so.

3 Q. And, for example, did you know about the  
4 Discovery Institute's Wedge document?

5 A. No. I've already testified that I think the  
6 first time I saw that was in the complaint.

7 Q. Fair enough. So at the time that the  
8 administration and the teachers were indicating their  
9 willingness to Mr. Buckingham to incorporate content  
10 from this tape, nobody but Mr. Buckingham knew  
11 anything about the Discovery Institute except for  
12 Mr. Buckingham?

13 A. Yeah, I don't believe the teachers or I were  
14 given information.

15 Q. But they were agreeing to do this because  
16 that's what Bill Buckingham wanted?

17 A. I'd agree with that.

18 Q. But at the same time neither Mr. Buckingham  
19 nor yourself nor anybody else was actually -- had  
20 actually gone to any of the mainstream scientific  
21 organizations to find out whether the materials, the  
22 content of *Icons*, had any scientific or academic  
23 merit. Correct?

24 A. No, although the teachers felt that it was  
25 accurate in that it pointed -- while it didn't offer

1 an explanation for some of the gaps, that it did  
2 fairly portray those areas of Darwin's theory that  
3 were less supported.

4 Q. They thought *Icons* was accurate science?

5 A. Yes, they did.

6 Q. Now, the next note down says, Intelligent  
7 design instead of creationism. Right?

8 A. Right.

9 Q. So here we're bringing intelligent design  
10 into this discussion of the curriculum committee.  
11 Right?

12 A. Yes.

13 Q. And you don't remember who initiated the  
14 subject of intelligent design at this meeting, do you?

15 A. No. And I think I -- I'm not sure what I  
16 testified to about that. But I think what my note  
17 is -- as we were working through, you know, the  
18 components of this compromise, one of the components  
19 is going to be some curriculum language. And thinking  
20 about it now, you have Mr. Buckingham mentioning  
21 creationism in June, and I think what we're saying is  
22 it's not creationism that we're going to put into  
23 language, it's going to be intelligent design.

24 Q. Okay. But you don't know who initiated that  
25 idea. Right?



1 A. That's correct.

2 Q. And, in fact, at that meeting you didn't  
3 even know what intelligent design was?

4 A. This is June. We didn't get the *Panda* books  
5 until July, I believe. I mean, it was mentioned at  
6 Messiah, but I don't think there was a full  
7 explanation of it.

8 Q. I mean, at this meeting, so far as you can  
9 tell, nobody knows what it is?

10 A. I'm trying to think. I don't think we  
11 received any materials on intelligent design prior to  
12 this meeting. I can't remember any.

13 Q. So the answer is yes, at this meeting,  
14 nobody knows what intelligent design is?

15 A. Well, I can't -- I know I haven't received  
16 the materials to understand what intelligent design  
17 is, but --

18 Q. Nobody else has explained it. Right?

19 A. No, no, remember Mrs. Spahr does have --  
20 remember when she got those legal opinions for  
21 teaching creationism, within that there was some  
22 discussion in there about intelligent design.

23 Q. So Mrs. Spahr thinks it's creationism?

24 A. Yes. But I don't remember in those -- I  
25 mean, if you're asking me what intelligent design is,

1 I don't recall -- know that if in those documents  
2 there was an explanation to allow Mrs. Spahr to make a  
3 judgment about that, that's all.

4 Q. Fair enough. At this June curriculum  
5 meeting, you don't know what intelligent design is and  
6 you don't know that anybody else knows what it is.  
7 Right?

8 A. That's right, I don't know that.

9 Q. So far as you can tell, it's just two words  
10 replacing the one word "creationism" that Bill  
11 Buckingham brought up in June. Right?

12 A. Yes.

13 Q. And this mention of intelligent design  
14 instead of creationism is occurring after  
15 Mr. Buckingham has had discussions with the Discovery  
16 Institute. Correct?

17 A. I think so.

18 Q. Now, if we could go to Exhibit 20, which are  
19 additional notes from this meeting. The middle of the  
20 page you have a note that Bill would like both taught,  
21 he wants intelligent design taught. Correct?

22 A. Yes.

23 Q. And you also have right above that as a  
24 to-do item, Opinion on intelligent design. Correct?

25 A. Yes.

1 Q. And what you mean by that is a legal  
2 opinion. Right?

3 A. I believe so, yes.

4 Q. And you eventually did receive an e-mail  
5 with a legal opinion from the school solicitor.  
6 Correct?

7 A. Well, the e-mail that we've already  
8 presented here deals with *Of Pandas*. I did send the  
9 solicitor the curriculum language that included  
10 intelligent design, and I don't think I got -- I  
11 remember talking to him about it.

12 Q. We have to be careful here.

13 MR. GILLEN: Thank you, Eric.

14 THE WITNESS: Okay.

15 THE COURT: You don't want to get into what  
16 you were told by counsel, and that's not what  
17 Mr. Rothschild's question was. And it's perfectly all  
18 right for you not to get into an area that's  
19 privileged. And I'll listen for an objection, but  
20 with that clarification, why don't you rephrase or get  
21 another question on the floor.

22 BY MR. ROTHSCHILD:

23 Q. We'll talk about the e-mail memo later, but  
24 let me just move on.

25 A. Okay.

1 Q. Another thing you have here right below what  
2 we just looked at is, To do, is *Descent of Man* in  
3 library? Right?

4 A. Yes.

5 Q. And *Decent of Man* is one of the books  
6 written by Charles Darwin. Is that your  
7 understanding?

8 A. Yes.

9 Q. And it deals with exactly what it sounds  
10 like, right, the descent of man from other creatures?

11 A. I haven't read it, but I guess.

12 Q. That's your understanding?

13 A. Yes.

14 Q. I haven't read it, either, but that's my  
15 understanding. Now, that was something brought up by  
16 Mr. Buckingham, wasn't it?

17 A. Yes.

18 Q. And he asked that because that book deals  
19 with the origins of life as he understands it.  
20 Correct?

21 A. What I remember is, I think he looked at  
22 this or portions of it. He was doing a lot of  
23 research on the Internet. My recollection is that he  
24 had problems and concerns with the book *Descent of*  
25 *Man*, and his question was -- you know, he wanted to

1 know if that is in our library, if our students would  
2 have access to that book.

3 Q. He wanted you to find that out?

4 A. Yes.

5 Q. And you understood he wanted you to find  
6 that out because he didn't think it should be in the  
7 library. Correct?

8 A. Well, he didn't say that. I mean, he just  
9 wanted to know if it was in the library. I know he  
10 had concerns he didn't think it was a good book.

11 Q. He certainly wasn't asking you to find out  
12 if it was in the library so it could be moved over to  
13 the science classroom. Correct?

14 A. You could say that.

15 Q. Now, moving forward into July, the 2004  
16 version of Miller and Levine came on the scene.  
17 Correct?

18 A. I'm sorry?

19 Q. Moving into July, the 2004 version of Miller  
20 and Levine came onto the scene. Right?

21 A. Yes.

22 Q. And you and the teachers reviewed it very  
23 carefully on the subject of evolution?

24 A. Yes.

25 Q. Because that was the subject that the board

1 was concerned about?

2 A. Yes.

3 Q. And you said that the teachers were happy  
4 with the 2004 version because -- and tell me if I'm  
5 characterizing your testimony correctly -- it  
6 discussed gaps in evolution more than the 2002  
7 version?

8 A. Yeah. When we went through both editions,  
9 we found a number of areas that we felt addressed  
10 Mr. Buckingham's concerns and thought that he would be  
11 happy with the changes that were in the new edition.

12 Q. Including that it was more forthcoming about  
13 gaps in evolution?

14 A. Yes.

15 Q. So from the standpoint of faculty and  
16 administration, the board no longer had a reason to  
17 worry that gaps in the theory of evolution weren't  
18 being taught. Is that fair?

19 A. Could you ask that again?

20 Q. After reviewing this new version of Miller  
21 and Levine, from the administration and the faculty's  
22 perspective, there was no longer a reason to worry  
23 that gaps in evolution weren't being taught. Is that  
24 fair?

25 A. From the position of the teachers and

1 administrators?

2 Q. Yes.

3 A. Well, I don't know that I came to that  
4 conclusion. I mean, for the most part, I'm looking at  
5 trying to get the book approved and trying to answer  
6 the concerns of the board and have the teachers  
7 address their concerns.

8 What the effect of those changes were, you  
9 know, both for the teachers and for administration, I  
10 mean, I don't know that I know that. I mean, we  
11 thought it was good that that was in there because  
12 that wasn't in there before, and that's something very  
13 specific that board members had talked about.

14 Q. Now, none of the other science books used by  
15 Dover students or actually any other aspect of the  
16 Miller and Levine biology textbook has ever been  
17 examined, to the best of your knowledge, to see if it  
18 reports the relevant gaps in scientific knowledge in  
19 other areas. Right?

20 A. None of the other science classes?

21 Q. Nobody has examined the chemistry book or  
22 physics book to see if they accurately report gaps in  
23 scientific knowledge relevant to those areas of study,  
24 have they?

25 A. Not while I've been there. I mean, I don't

1 know.

2 Q. And, in fact, nobody looked at the biology  
3 book, any version of the biology book, to see if it  
4 correctly reported gaps in other aspects of biology  
5 besides evolution. Correct?

6 A. Yeah, I don't remember the board having  
7 concerns in other sections of the biology book other  
8 than that one section.

9 Q. Now, eventually *Pandas* came on the scene.  
10 Right?

11 A. Yes.

12 Q. And you agree with what Dr. Nilsen  
13 testified, that the teachers complained about the book  
14 having faulty science, being dated, and having  
15 readability issues beyond grade level. Right?

16 A. Right. Mrs. Spahr said she found something  
17 that was inaccurate scientifically. I know Jen had  
18 done a readability study on it. And it was an old  
19 copyright for the book.

20 Q. And these are three problems that the  
21 teachers communicated, faulty science, dated,  
22 readability. Right?

23 A. Yes.

24 Q. And then you had a district specialist,  
25 reading specialist, Dr. Butterfield, do a readability



1 study, and she concluded that the book's readability  
2 was grade 12 or higher. Correct?

3 A. That's correct.

4 Q. And the teachers also communicated that they  
5 thought the content was creationist or close to it.  
6 Correct?

7 A. Of *Pandas*?

8 Q. Yes.

9 A. I don't remember them saying that of *Pandas*.  
10 I remember Mrs. Spahr taking the position -- and I  
11 believe the department shared this with her -- that  
12 intelligent design was creationism.

13 Q. But you don't have a separate specific  
14 memory about them considering *Pandas* to be a  
15 creationist book?

16 A. Right.

17 Q. Okay. Fair enough. Now, you did get a  
18 legal opinion about *Pandas*. Correct?

19 A. Yes.

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

21 THE COURT: You may.

22 BY MR. ROTHSCHILD:

23 Q. What we've marked as P70, Mr. Baksa, that is  
24 an e-mail you received from the school district  
25 solicitor, Stephen Russell, or that Dr. Nilsen

1 received?

2 A. Right, Dr. Nilsen received it.

3 Q. And at the curriculum committee meeting at  
4 the end of August, this document was circulated to a  
5 number of people, including teachers and curriculum  
6 committee members. Correct?

7 A. Yes.

8 Q. And this is something you had seen?

9 A. Yes.

10 Q. Now, one of the things that is -- that  
11 Mr. Russell says here is that the Thomas More Law  
12 Center refers to the creationism issue as intelligent  
13 design. Right?

14 MR. GILLEN: Objection, Your Honor, again,  
15 just to any characterization of the document. That's  
16 Mr. Russell's description of our position, not our  
17 own.

18 THE COURT: What's the objection?

19 MR. GILLEN: I just want to make it clear  
20 for the record that this is Mr. Russell's description  
21 of our position, not anything we told him. Objection,  
22 hearsay, is, I guess, it.

23 THE COURT: On your first objection, you're  
24 making an argument instead of an objection, and that's  
25 not appropriate. You know that.

1 MR. GILLEN: That's correct.

2 THE COURT: You can save that. So that's  
3 overruled. Now what's your -- so you default to what?

4 MR. GILLEN: I default to this, that  
5 statement by Mr. Russell is hearsay in that he's  
6 purporting to characterize whatever he heard from  
7 whomever he spoke with at our organization. That's  
8 hearsay, and I object to it.

9 MR. ROTHSCCHILD: And I want to be -- first  
10 of all, we're introducing it for what the board  
11 members, teachers, and administrators heard, received  
12 from Mr. Russell. I agree that there's hearsay, and I  
13 want to be just careful here because Mr. Gillen is  
14 going a little bit beyond hearsay and I would suggest  
15 testifying here that this is not what they said. And  
16 I don't want to make him a witness, and I think there  
17 needs to be a remedy of that being stricken, because  
18 we don't know that, either.

19 MR. GILLEN: Well, that's what I'm saying.  
20 This is his -- basically it's hearsay. I don't know  
21 who he spoke to, but he is purporting to repeat  
22 something that he heard. I have no knowledge of that,  
23 and I don't want that hearsay admitted.

24 THE COURT: Well, you're saying you didn't  
25 say it, and now you're saying you didn't have

1 knowledge of it. And what Mr. Rothschild's  
2 articulated fear is, is that you're opening the door  
3 and potentially waiving a privilege that exists. I  
4 don't think you got to that point, but we want to be  
5 careful.

6 Now, on the hearsay objection, it appears to  
7 me that Mr. Rothschild is introducing this not for the  
8 truth but for the impact on the viewer, in this case,  
9 Mr. Baksa. I don't take it as fact.

10 MR. GILLEN: Okay.

11 THE COURT: And I don't see that it's being  
12 introduced for that purpose. So on the second basis,  
13 I'll overrule the objection, and you may proceed.

14 BY MR. ROTHSCHILD:

15 Q. So in this e-mail, Mr. Russell reports that  
16 the Thomas More Law Center, Mr. Thompson, refers to  
17 the creationism issue as intelligent design. Right?  
18 That's what he wrote?

19 A. Yes.

20 Q. The first paragraph?

21 A. Yes.

22 Q. And that's something you were aware of  
23 around the time of this e-mail. Correct?

24 A. Yes.

25 Q. August 26th, 2004?

1 A. Yes.

2 Q. And then there is discussion of a textbook  
3 here, and you understand that to be *Pandas*. Correct?

4 A. Yes.

5 Q. And what Mr. Russell reports from Thomas  
6 More is that there's been discussions about possible  
7 litigation, nothing has come about, this suggests to  
8 me that no one is adopting the textbook. And then he  
9 says, Because if they were, one can safely assume  
10 there would have been a legal challenge by someone  
11 somewhere. Correct?

12 A. Yeah. Can you show --

13 Q. This is all in the first paragraph.

14 A. Okay.

15 Q. If you need to take a minute, I don't mean  
16 to rush you through the document. I'm just trying to  
17 rush us through the trial.

18 THE COURT: Why rush now?

19 MR. ROTHSCHILD: You know, I talked about  
20 pressure, there's a little from home.

21 THE WITNESS: Okay. I agree.

22 BY MR. ROTHSCHILD:

23 Q. And certainly Mr. Russell, from his own  
24 standpoint, is nowhere suggesting that using *Pandas* in  
25 a public school classroom would be legal or

1 constitutional. Correct?

2 A. You're asking me whether he thinks it would  
3 be legal?

4 Q. I'm just asking you to look at what he said  
5 here, and nowhere there is he conveying to the readers  
6 of this e-mail that using *Pandas* is legal or  
7 constitutional. Correct?

8 A. I don't see where he's clearly saying that  
9 it's illegal.

10 Q. I agree with you, he's not saying it's  
11 illegal. Right?

12 A. Right.

13 Q. But he's also not saying it's legal or  
14 constitutional. Correct?

15 A. I don't think you'd ever get a lawyer to go  
16 out on a limb like that, and I think that's why  
17 Mr. Russell clearly explains, you know, what legal  
18 challenges there might be to the book and for us to  
19 consider the use of the book and how the book might be  
20 challenged. He's not giving it a -- you know, a  
21 totally green light, but he's cautiously advising the  
22 board to consider these matters in consideration of  
23 use of the book.

24 Q. There's certainly nothing in here that the  
25 board or the district could rely upon and take comfort

1 that using the book is constitutional. Correct?

2 A. Well, this was provided to the board for  
3 them to be able to make a decision about the use of  
4 the book, and their interpretation and comfort level  
5 with the language that Mr. Russell provided, I'm not  
6 aware of that.

7 Q. Okay. But from your own standpoint, you  
8 don't see anything in this document that someone  
9 choosing to add the book to the curriculum could rely  
10 upon and take comfort that what they're doing is  
11 legal. Correct?

12 A. Well, again, I don't think it clearly says  
13 it's illegal. It says to consider these matters if  
14 you were to use the book, you know, that he hasn't  
15 found any litigation with the book or its use.

16 Q. There's nothing positive in here, is there,  
17 Mr. Baksa? There's nothing that a reader could say,  
18 we're going to be okay if we use this book? I agree  
19 with you it's not saying it's illegal, but there's  
20 nothing positive saying, you know, you'll be fine or  
21 we think you'll be fine or anything anywhere close to  
22 that. Correct?

23 A. I would characterize this as Mr. Russell  
24 advising caution in using the book.

25 Q. And, in fact, if you go down to the bottom

1 of the document, he's expressing concerns over a  
2 lawsuit that the Dover School District might face.  
3 Correct?

4 A. Yes.

5 Q. And the reason he's concerned is, as he says  
6 in the last sentence of the last large paragraph is,  
7 that the last several years there has been a lot of  
8 discussion, news print, et cetera, for putting  
9 religion back in the schools. Right?

10 A. Yes.

11 Q. And you knew what he was talking about,  
12 didn't you?

13 A. Yes.

14 Q. Because, for example, you heard  
15 Mr. Buckingham talk about creationism. Right?

16 A. Yes.

17 Q. You heard him talk about it's not a Muslim  
18 nation, it's one founded on Christian values. Right?

19 A. Right.

20 Q. And you heard him say at one meeting or  
21 another, 2,000 years ago a man died on a Cross, can't  
22 someone take a stand for Him now? Right?

23 A. Right.

24 Q. Now, Mr. Gillen went through a number of  
25 documents with you that he described as your research



1 on *Pandas*. Correct? You had some notes and some  
2 other documents?

3 A. Yes.

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

5 THE COURT: You may.

6 MR. ROTHSCHILD: Matt, could you put up D35,  
7 please.

8 BY MR. ROTHSCHILD:

9 Q. Mr. Baksa, what I've shown you is  
10 Defendants' Exhibit 35. That was one of the documents  
11 that Mr. Gillen showed you on your direct. Right?

12 A. Yes.

13 Q. And this is an order form from the Institute  
14 for Creation Research online store. Correct?

15 A. Yes.

16 Q. And it's an order form for *Pandas*. Right?

17 A. Yes.

18 Q. And this is something you did. Right? You  
19 went on the Institute for Creation Research online  
20 store and pulled up *Pandas*. Correct?

21 A. Not me personally.

22 Q. Who did that, Mr. Baksa?

23 A. Either my secretary or Marsha Hake. I know  
24 from my notes Marsha Hake did a lot of the research  
25 for finding this -- I think it was Marsha Hake. And

1 at one point we wanted to get prices for the book, not  
2 order the book, but get pricing information and  
3 publishing information where we might -- where the  
4 book might be purchased. And then I believe she  
5 produced this document for the -- to get us to the Web  
6 site.

7 Q. Who is Marsha Hake?

8 A. She's secretary for the language arts  
9 supervisor and the district people personnel director.

10 Q. And this was done on your instruction?

11 A. Yes.

12 Q. And in the bottom corner of the document, it  
13 has a slash 2004 on it. Do you see that, the bottom  
14 right-hand corner?

15 A. Yes.

16 Q. And we asked your counsel to look at the  
17 original to see if that had been redacted, and he  
18 couldn't find anything. Do you know what the complete  
19 date of this document is?

20 A. I'd guess July. I remember when we first  
21 received a copy of *Pandas*, I gave it to Jen Miller,  
22 and I know that we then ordered additional books for  
23 board members and other teachers to look at. So I'm  
24 guessing July, August.

25 Q. And what it says here, if you look at the

1 text, below the picture of *Pandas*, it says,  
2 Beautifully illustrated, thoroughly researched  
3 textbook designed for public schools without biblical  
4 content, contains interpretations of classic evidences  
5 in harmony with the creation model. Correct?

6 A. Yes.

7 Q. So that was information you were aware of as  
8 you researched *Pandas*. Correct?

9 A. Yes.

10 Q. Now, in the order information it says,  
11 Quantity in basket, 50. Right?

12 A. Yeah.

13 Q. Now, you didn't get 50 copies for the board  
14 to read, did you?

15 A. No.

16 Q. And in July, Mr. Buckingham was still  
17 talking about ordering 220 copies of *Pandas*. Correct?

18 A. Right.

19 Q. So 50, that's pretty close to what actually  
20 got ordered. Isn't that right?

21 A. I believe 60 were ordered.

22 Q. But 50 is pretty close?

23 A. Yeah.

24 Q. Mr. Baksa, were you pursuing this  
25 information to order the books on the instruction from

1 somebody on the board?

2 A. To order the books?

3 Q. Yes.

4 A. No. The original thought of the books was  
5 when we got the books, we first thought we would have  
6 those as a resource for the teachers. Then in my  
7 research of the book and how it was used, I told  
8 Dr. Nilsen, talk to Dr. Gillen. He told me he had 50  
9 copies donated and used them as references in his  
10 classroom.

11 Q. Who is this?

12 A. Dr. Gillen, who taught at Tomball in Texas.  
13 So I had that information. I think 50 is the first  
14 number. And then I remember Dr. Nilsen talking about  
15 50 as the number of books that we might look as --  
16 when it moved from teacher resources to classroom  
17 resources, 50 was the number we were talking about.  
18 That number wasn't changed until I met with the board  
19 curriculum committee to finalize the curriculum  
20 language for XI-A.

21 And at that point it was decided we had  
22 three classrooms, there would be 20 put in each  
23 classroom, so the number was then 60. I think what we  
24 were doing and I really wasn't -- I wasn't involved  
25 with -- Dr. Nilsen pretty much handled the book and

1 getting information out. I was involved initially in  
2 buying, you know, sample copies that the teachers  
3 reviewed.

4 And I don't even remember -- I can't tell  
5 you, I mean, I don't think we bought the books through  
6 the district. I'm pretty sure we didn't. But I think  
7 we were getting information for someone to do that,  
8 though.

9 Q. But you were the ones researching for the  
10 anonymous donors, where they could get the book and  
11 how much it would cost?

12 A. Well, we were researching this to give to  
13 our board members to give to whoever was going to buy  
14 these books, yeah.

15 Q. And you were doing that on the instruction  
16 of the board, doing this research?

17 A. Well, Dr. Nilsen told me to do it.

18 Q. So Dr. Nilsen told you, find out how much 50  
19 copies --

20 A. Right, right.

21 Q. So that the donor will know how much it will  
22 cost?

23 A. Right.

24 THE COURT: Mr. Rothschild, we can stay with  
25 this from my standpoint. I don't know if you have any

1 shot at getting finished today, but I'm willing to --

2 MR. ROTHSCHILD: I don't, Your Honor. This  
3 would be a perfectly good --

4 THE COURT: Well, no, I think we ought to go  
5 a little longer. Why don't we go to quarter of and  
6 use the time. I think we should.

7 MR. ROTHSCHILD: Okay.

8 THE COURT: And even if you don't get  
9 finished today, let's call it quits at 4:45.

10 MR. ROTHSCHILD: Sure.

11 BY MR. ROTHSCHILD:

12 Q. Now, we talked about all the problems that  
13 the teachers had with *Pandas*, faulty science,  
14 outdated, not appropriate grade level. Correct?

15 A. Yes.

16 Q. And you and Dr. Nilsen knew about that.  
17 Right?

18 A. I don't know if I -- I knew about that. I  
19 don't know if I shared that information with him or  
20 not.

21 Q. And the board members on the curriculum  
22 committee, they were aware of that, as well, that that  
23 was the teachers' position?

24 A. I believe we talked about that at the August  
25 meeting when we were looking at how they use the book.

1 Q. And despite all these misgivings by the  
2 teachers, Dr. Nilsen sought to have it accepted as a  
3 reference text as a way of compromising with  
4 Mr. Buckingham. Correct?

5 A. That's correct.

6 Q. And the teachers acquiesced to that?

7 A. Yes.

8 Q. They certainly weren't advocates, were they?

9 A. Their first preference would be, right, not  
10 to have the book.

11 Q. So if anyone suggests that *Pandas* was a good  
12 addition to the science curriculum because the  
13 teachers accepted it, that wouldn't be a fair  
14 representation of the teachers' position, would it?

15 A. I'm sorry?

16 Q. If anyone were to suggest that they felt  
17 *Pandas* was a good addition to the science curriculum  
18 because the teachers accepted it, that's not really a  
19 fair representation of the teachers' position. Would  
20 you agree?

21 A. I'd agree that the teachers, in looking at  
22 getting Miller and Levine, the teachers agreed to have  
23 *Pandas* placed in the curriculum as a -- placed in the  
24 classroom at this point we're talking, we're not doing  
25 the curriculum yet, at least placed in the classroom

1 as a set of reference texts. Their preference would  
2 be not to have to do that, but they would do that so  
3 that they could get Miller and Levine.

4 Q. There's absolutely no way you could construe  
5 the teachers as having supported *Pandas* in any way.  
6 Correct?

7 A. I think that's correct, yeah.

8 Q. Let's move forward to the development of  
9 curriculum change. Alan Bonsell wanted something put  
10 in the curriculum that would require teachers to teach  
11 that there are holes in Darwin's theory, wanted the  
12 teachers to show the flaws?

13 A. Yeah, gaps and problems specifically.

14 Q. And, again, Mr. Bonsell never paid any  
15 attention to any other aspect of the science  
16 curriculum in that way, correct, identifying gaps and  
17 problems?

18 A. No, I don't remember anything else.

19 Q. Now, as we've looked at, you wrote the first  
20 draft of the change to the biology curriculum. Right?

21 A. Yes.

22 Q. And you showed it to the teachers?

23 A. Yes.

24 Q. And that was the version that didn't have  
25 intelligent design or *Pandas* in it. Correct?



1 A. The teachers, what they returned to me?

2 Q. Why don't we get the exhibit.

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

4 THE COURT: You may.

5 BY MR. ROTHSCHILD:

6 Q. I'm showing you what's been marked as  
7 Plaintiffs' Exhibit P73, and you probably looked at a  
8 similar document with a defendants' exhibit number on  
9 it. Now, this has a memo that says, Here's the  
10 recommended change for biology, the changes were  
11 reviewed by the science department. Correct?

12 A. Yes.

13 Q. Now, you wrote the first draft of this  
14 document. Correct?

15 A. Right. Coming out of the August meeting, I  
16 was directed to work with the teachers to develop  
17 curriculum language. So to get the ball rolling, I  
18 wrote a first draft and sent it to them, and they  
19 returned this to me.

20 Q. Now, when you say "they returned this," are  
21 you talking about the next page which has the Bates  
22 stamp 29?

23 A. Yes.

24 Q. Now, I'm a little confused because I  
25 understood from your testimony earlier that you were

1 the only person who created this format of document.

2 A. Right.

3 Q. So the teachers didn't actually go into the  
4 system and create this physical document. Right?

5 A. No, they would have given me this language  
6 and I would have put it into the curriculum.

7 Q. And your suggestion that we haven't seen  
8 your initial draft, there's something different about  
9 this draft, which says, Students will be made aware of  
10 gaps in Darwin's theory and of other theories of  
11 evolution? Is there something different between this  
12 language and the language you proposed?

13 A. Yeah, that's what I don't know. There's  
14 only one -- the curriculum is kept in my secretary's  
15 computer. And there's only one version of that,  
16 because you don't want to keep multiple edits of the  
17 curriculum where you don't know which one is the  
18 proper one.

19 So whenever I would give her language to  
20 change it, she would write over the existing document,  
21 and unless there was a hard copy produced of what was  
22 prior, I wouldn't have a record of that.

23 Q. So you don't know whether there was any  
24 difference between what we see on the Bates stamped 29  
25 and the language you initially proposed?

1 A. That's correct.

2 Q. Or maybe they changed -- added a period  
3 to --

4 A. I don't know -- I'm not sure what I would  
5 have given them.

6 Q. And certainly it is the case that you  
7 started the process? They didn't say, here's  
8 something we want in the curriculum, you said, here's  
9 a curriculum change, and then they reviewed it.  
10 Right?

11 A. That's correct.

12 Q. And that's true of every aspect of this  
13 change to the teaching of evolution, none of this was  
14 initiated by the teachers, they were reacting to it?

15 A. Well, I created the draft language for the  
16 teachers to review, but when it comes to the  
17 statement, that was something they requested that they  
18 have created for them.

19 Q. We'll get to that.

20 A. Okay.

21 Q. But in terms of these curriculum changes,  
22 you were the one who started the ball rolling by  
23 coming up with a curriculum change?

24 A. Right. They're not initiating these  
25 changes.

1 Q. Thank you. And you were initiating them  
2 because you were doing what you understood was your  
3 assignment from the board. Correct?

4 A. That's correct.

5 Q. Then we have this meeting on October 7th,  
6 right, the meeting of the curriculum committee on  
7 October 7th? Right?

8 A. Okay.

9 Q. You know what we're talking about there?

10 A. With just the board curriculum committee?

11 Q. Correct.

12 A. Yes.

13 Q. And the teachers were not invited to that  
14 meeting. Correct?

15 A. That's correct.

16 Q. Now, in your experience at Dover, usually  
17 it's the teachers who develop curriculum. Isn't that  
18 right?

19 A. Well, they did. And the purpose of that  
20 meeting was, I had the teachers' recommendation, I had  
21 the language they wanted. What I had prior to  
22 October 7th is, I had Mr. Buckingham suggesting some  
23 language, Mrs. Brown suggesting some language, and  
24 Mr. Bonsell suggesting some language. And what I  
25 needed to get was a consensus from them to agree on

1 the language that they wanted so that I could then  
2 take that back to the teachers for the teachers to  
3 review.

4 Q. And you used the phrase "what the teachers  
5 wanted." It wasn't really what the teachers wanted,  
6 it's what the teachers had agreed to. Isn't that  
7 fair? When we're talking about the teachers' version  
8 here, it's not what the teachers wanted, it's what  
9 they agreed to in response to the proposal you had  
10 initiated?

11 A. That's correct.

12 Q. And there was a discussion of the various  
13 proposals from the administration and teachers and the  
14 various board members, correct, at this October 7th  
15 meeting?

16 A. Yes.

17 Q. And ultimately the result from the board  
18 curriculum committee married the language of  
19 Mr. Bonsell, which had gaps and problems, with the  
20 language of Mr. Buckingham, which had intelligent  
21 design. Correct?

22 A. Right.

23 Q. And this was all decided in a matter of  
24 minutes. Correct?

25 A. It was decided fairly quickly.

1 Q. I think in your deposition you said a matter  
2 of minutes.

3 A. I don't remember if I did, but I know it  
4 didn't take long to come to an agreement on what the  
5 language was.

6 Q. Now, fast-forwarding to October 18th, as you  
7 said, Mrs. Spahr got up at the meeting to speak up  
8 against the change recommended by the board curriculum  
9 committee. Correct?

10 A. Yes.

11 Q. And she gave a somewhat lengthy speech?

12 A. Yes.

13 Q. And you didn't stand up and disagree with  
14 what she had said?

15 A. Right.

16 Q. And neither did Dr. Nilsen?

17 A. Yeah, that's correct.

18 Q. And, in fact, you supported the teachers'  
19 position at that meeting?

20 A. Yes.

21 Q. You understand that they're the science  
22 education experts in the district?

23 A. Yes.

24 Q. And you also recognized, as you testified  
25 earlier, that they were acting in the best interests

1 of the students. Isn't that fair?

2 A. Yes.

3 Q. And you felt the board should have approved  
4 one of the compromised resolutions that the teachers  
5 agreed to?

6 A. Yes.

7 Q. And not the change that included intelligent  
8 design?

9 A. Correct.

10 Q. You still feel that way, don't you,  
11 Mr. Baksa?

12 A. Yes.

13 Q. At the board meeting there was -- no outside  
14 speakers were brought in to discuss the relative  
15 merits of intelligent design. Correct?

16 A. Correct.

17 Q. Nobody on the board explained to other  
18 members what intelligent design is or why they should  
19 support it?

20 A. I don't remember hearing that.

21 Q. Or why it would improve science education?

22 A. I don't remember hearing that.

23 Q. Nobody explained what intelligent design's  
24 status was in the scientific community. Correct?

25 A. Which board meeting?

1 Q. October 18th.

2 A. In October? After Mrs. Spahr and  
3 Mrs. Miller talked, pretty much the discussion just  
4 dealt with amending the original language. I don't  
5 remember --

6 Q. So nobody except for, perhaps, the science  
7 teachers who opposed intelligent design explained what  
8 intelligent design's status was in the scientific  
9 community?

10 A. Right, I don't remember any talk of that.

11 Q. And other than *Pandas*, you're not aware of  
12 any materials that were distributed that would aid the  
13 board in their decision. Correct?

14 A. Yeah, I know we made *Of Pandas* available to  
15 them. I'm not sure if the DVDs from Discovery were  
16 available or not.

17 Q. And that's all you can think of?

18 A. Yes.

19 Q. Now, the only change that did get made to  
20 the curriculum committee recommendation was the  
21 statement, Origins of life is not taught. Correct?

22 A. Could you ask again?

23 Q. The only change that was made before the  
24 final vote to the board curriculum recommendation was  
25 the note, Origins of life is not taught?



1 A. Right, that was added from C to A.

2 Q. And, again, by "origins of life," you  
3 understand that to mean that the teachers don't teach  
4 macroevolution or speciation. Correct?

5 A. Yes.

6 Q. And that's your understanding of how the  
7 board understands that term. Correct?

8 A. I think so, yeah.

9 Q. You can't teach them, for example, that men  
10 have common ancestors with other nonhuman creatures.  
11 Correct?

12 A. I don't remember Mr. Bonsell using that  
13 specific language. I do have language like that from  
14 my notes from Mr. -- meeting with Mr. Buckingham.  
15 That's one of his concerns.

16 MR. ROTHSCHILD: Your Honor, this would be a  
17 good time. I won't be able to finish this afternoon.

18 THE COURT: All right. I had hoped we would  
19 finish with Mr. Baksa today. I'm sure that was his  
20 fondest hope, as well. And we did not. So I think  
21 there's going to have to be some discussion, given the  
22 time constraints that we've imposed on ourselves --  
23 and I would urge you to discuss that as we get into  
24 tomorrow. I think that the end point, in any case,  
25 for testimony has got to be right around the noon hour

1 on Friday. So carve it up as you wish, but I want  
2 everybody to have a fair exchange. So we don't want  
3 an imbalance between direct and cross-examination.  
4 Give that some thought, because we have two additional  
5 witnesses, as I understand, Mr. Gillen. Is that  
6 correct?

7 MR. GILLEN: You are correct, Your Honor.

8 THE COURT: And I don't know how much longer  
9 we have, but there's obviously the potential for  
10 redirect with -- and some recross, I guess, with  
11 Mr. Baksa. So we'll try to finish him up. Now, I do  
12 have one matter I have to attend to tomorrow, so we're  
13 going to start at 9:15 tomorrow, and that further  
14 takes some time out, but we can probably capture that  
15 at the back end or have a shortened lunch, if we need  
16 to, tomorrow.

17 And I assume that we're going to start with  
18 Mr. Baksa tomorrow and not call him out of order,  
19 which I'm sure, besides being illogical, probably  
20 violates some convention against torture in making him  
21 come back again. Anything further for today?

22 MR. ROTHSCHILD: No.

23 THE COURT: All right. We'll be in recess  
24 until 9:15 tomorrow morning, and we'll reconvene with  
25 Mr. Baksa's continued testimony at that time.

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(Whereupon, the proceedings were adjourned.)

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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this copy is a correct transcript of the same.

Dated in Harrisburg, Pennsylvania, this 11th day of November, 2005.

**/s/ Lori A. Shuey**  
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