

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

TAMMY KITZMILLER, et al : :
 : : CASE NO.
 : : 4:04-CR-002688
 : :
 : :
DOVER AREA SCHOOL DISTRICT, : :
et al : :

TRANSCRIPT OF PROCEEDINGS
BENCH TRIAL

AFTERNOON SESSION

BEFORE: HON. JOHN E. JONES, III

DATE : September 27, 2005
1:48 p.m.

PLACE : Courtroom No. 2, 9th Floor
Federal Building
Harrisburg, Pennsylvania

BY : Wendy C. Yinger, RPR
U.S. Official Court Reporter

APPEARANCES:

ERIC J. ROTHSCHILD, ESQUIRE
WITOLD J. WALCZAK, ESQUIRE
STEPHEN G. HARVEY, ESQUIRE
RICHARD B. KATSKEE, ESQUIRE
For the Plaintiffs

PATRICK T. GILLEN, ESQUIRE
RICHARD THOMPSON, ESQUIRE
ROBERT J. MUISE, ESQUIRE
For the Defendants

1 THE COURT: All right. We'll continue then
2 with this witness on direct.

3 (Whereupon, ARALENE CALLAHAN, resumed the
4 witness stand.)

5 **DIRECT EXAMINATION (CONTINUED)**

6 BY MR. HARVEY:

7 Q. Mrs. Callahan, did you attend a meeting of the
8 Dover Area School District Board of Directors on or
9 about October the 4th, 2004?

10 A. Yes, I did.

11 Q. I'd like you to take a look at what has been
12 marked as Plaintiff's Exhibit 78 in the binder before
13 you. Have you had a chance to look at it?

14 A. Yes.

15 Q. Can you tell me what it is?

16 A. It's the planning meeting agenda for Monday,
17 October 4th.

18 Q. And can you please tell me whether there's
19 anything on the agenda for the meeting about a change to
20 the biology curriculum?

21 A. No.

22 Q. Is there anything there under curriculum at all?

23 A. Yes, there is an FYI from Dr. Nilsen.

24 Q. Are you looking at page 1 of the page that has
25 the base number 135?

1 A. Yes.

2 Q. Please tell us what it says there about, under
3 curriculum?

4 A. It says, the superintendent has approved the
5 donation of two classroom sets, 25 each, Of Pandas and
6 People. The classroom sets will be used as references
7 and will be made available to all students.

8 Q. Now I'd like to ask whether you attended the
9 meeting of the board on October the 18th, 2004?

10 A. Yes.

11 Q. And why did you attend that meeting?

12 A. Because I was concerned about the curriculum
13 change that I knew was supposed to happen on October
14 18th, not for anything that was on the planning meeting,
15 but because Mike Baksa had given me a sheet of paper
16 with potential curriculum changes on it because I was a
17 member of the district curriculum committee. And that
18 was a few days before the October 18th meeting.

19 Q. Please take a look at what's been marked and is
20 in your notebook as Plaintiff's Exhibit 87. Do you have
21 that in front of you?

22 A. Yes.

23 Q. What is it?

24 A. That's the agenda for the board meeting of
25 October 18th, 2004.

1 Q. Now please tell us what's listed on that agenda
2 under curriculum?

3 A. Under the heading of curriculum is the addendum.

4 Q. What does it say?

5 A. It says, to approve changes to the biology I,
6 grade 9 planned course curriculum guide for the
7 2004-2005 school year. In the background information,
8 copies of the changes have been sent to the district
9 curriculum advisory council and the science department.

10 Q. Was this curriculum change on the planning
11 meeting agenda?

12 A. No, and that's why it's in bold print and it's an
13 addendum item, to indicate it was not part of the
14 planning meeting.

15 Q. Was this a concern to you at the time?

16 A. Yes.

17 Q. Why?

18 A. Because -- I mean, I really thought it was always
19 an important practice to have items brought up at a
20 planning meeting so there would be enough time for the
21 faculty and community members to respond to anything
22 that was going to be changed. And, I mean, this was
23 even bigger because there certainly had been a lot of
24 attention to it.

25 There were a lot of people who had a tremendous

1 amount of problems with -- well, what end up happening
2 and what was happening in the district at the time.

3 Q. Now there's a reference there to the district
4 curriculum advisory council. Do you see that?

5 A. Yes.

6 Q. And do you know what that is?

7 A. Yes, that's a committee that's made up of board
8 members, administrators, faculty, and community members.

9 Q. And were you on that committee at that time?

10 A. Yes.

11 Q. Were you on that as a board member or as a
12 parent?

13 A. As a parent.

14 Q. And did you receive a copy of the changes as
15 referred to in the curriculum -- excuse me, the agenda?

16 A. Yes, a few days before the meeting.

17 Q. How did you receive that?

18 A. I don't remember if they were mailed to me or if
19 Mike Baksa handed them to me at some point.

20 Q. Was a meeting held of that committee?

21 A. No.

22 Q. Did you respond in any way to receiving that
23 proposed curriculum change?

24 A. Yes. It was verbal, but I said to Mike Baksa, I
25 am formally making a request that this change be turned

1 over to the district curriculum committee because it's
2 the district curriculum committee that reviews changes
3 in curriculum and gives it approval for those changes.

4 Q. Did you speak at the meeting on October 18th?

5 A. Yes.

6 Q. Can you remember what you said, and please tell
7 us?

8 A. I know I spoke about urging, strongly urging the
9 board to return this change, potential change to the
10 district curriculum committee so it could be reviewed.
11 And also, I thought it was important to give the public
12 time to respond to it, like I had said before. I
13 also -- I know I read a paragraph from the book Of
14 Pandas and People, and I asked the board at that time if
15 the paragraph that I read was still accurate.

16 And the reason I wanted to know that was because
17 that particular paragraph that I read had been footnoted
18 from 1977 and -- 1977 is pretty old in a science book,
19 and I wanted to make the point that virtually all the
20 footnotes seemed to be 20 or 30 years old. And I think
21 anybody who's familiar with science realizes that when
22 you publish a science book, you run the risk of the day
23 it's out, that it's going to be outdated.

24 And the thought of -- I mean, that was just one
25 example that I wanted to drive home to the school board,

1 that you couldn't possibly consider this a valid science
2 reference book when you had so many footnotes that were
3 20 and 30 years old. I then -- I had with me many
4 comments from scientists regarding the book *Of Pandas*
5 *and People*, and I went down and I read just a few of
6 them.

7 But I did inform them there were certainly many
8 more, and I could go on and on, that I had not found any
9 scientist who considered this worthy of being called a
10 scientific reference book. I might have said some other
11 things, but I don't remember.

12 Q. Do you remember if you said anything about you
13 being on the district curriculum committee?

14 A. Yes, because that's, you know, part of the reason
15 that I was on the district curriculum committee, and I
16 was urging it because I knew the practices of the
17 district curriculum committee, and changes that happened
18 within the district concerning curriculum went through
19 that committee.

20 Q. What did you tell the board about that on October
21 the 18th?

22 A. That I thought they were bypassing a step that
23 had been past practice, and I really felt like it was
24 starting to look like they were just railroading this
25 through the district, and they actually didn't want any

1 input from any scientists or science -- scientists or
2 any of the science teachers or even any of the community
3 members at that point.

4 Q. Do you remember anything else you said at that
5 meeting?

6 A. No. I might have said something else. I don't
7 remember.

8 Q. Do you remember what else happened at the
9 meeting?

10 A. I know. Also during public comment, there were
11 quite a number of community members who stood up and
12 spoke. They spoke about the legal issues. They spoke
13 about their concerns for the science behind the book Of
14 Pandas and People and also this curriculum change.
15 There were maybe a dozen people who spoke, all of them
16 very, very concerned about this book being introduced
17 and this curriculum change. And I do believe there was
18 one person who did speak in favor of it.

19 Q. Do you recall any discussion among the board
20 members about their reason for making the curriculum
21 change?

22 A. No, because people did ask about that. I mean, I
23 know there was one person -- there could have even been
24 several people who asked about the scientific method
25 behind intelligent design, and there was no answer to

1 that. There were never -- most of the questions or the
2 concerns that anybody brought up were really not
3 responded to by the board.

4 Q. Do you remember board member Heather Geesey
5 saying anything at that meeting?

6 A. I do remember Heather Geesey saying that they
7 should be fired.

8 Q. And what was your understanding at the time of
9 what she was talking about?

10 A. That she thought the teachers should be fired if
11 they didn't follow the direction of the board.

12 Q. Now do you remember there was some voting at the
13 meeting?

14 A. Yes.

15 Q. Do you remember the outcome of that?

16 A. That's the vote was made to make the change in
17 the curriculum.

18 Q. Did you attend the meeting of, the next meeting
19 of the board which, I believe, was on November the 1st?

20 A. Yes.

21 Q. Why did you attend that meeting?

22 A. In between that October 18th meeting and the
23 November 1st meeting -- excuse me. I asked if I could
24 listen to the tapes of the October 18th meeting. And I
25 was told only board members were permitted to listen to

1 those tapes.

2 So, again, I addressed the board in public
3 comment saying I was concerned that I was not given the
4 opportunity to listen to this tape. I thought that they
5 were a public record that should be accessible to people
6 in the public, and I believed that it was a violation of
7 the freedom of information law.

8 Q. And did anyone -- you said that at the board
9 meeting?

10 A. Yes.

11 Q. And you said that you had made a request prior to
12 the board meeting --

13 A. Yes.

14 Q. -- to listen to the tape. Who did you make that
15 request to?

16 A. I believe I talked to Karen Holtzapple.

17 Q. Who's Karen Karen Holtzapple?

18 A. She's the secretary to the business manager.

19 Q. What was the policy about listening to tapes when
20 you were a member of the board?

21 A. I know my experience had been with the tapes that
22 we were open about people in the public listening to
23 those tapes. I had been with people when they had
24 listened to the tapes. I mean, one person I remember in
25 particular.

1 Q. Do you know whether the board had a policy about
2 retaining tapes when you were a member of the board?

3 A. I know certainly at the beginning -- when I was
4 first on the board, I mean the tapes were destroyed
5 shortly after the minutes were taken. And then there
6 was a discussion at one of the board meetings -- this
7 was several years ago -- where board members were
8 saying, you know, why can't we keep these tapes maybe
9 six months to a year?

10 I don't remember if the board took a vote about
11 that. But I was left with the impression that the tapes
12 were going to be kept six months to a year. The problem
13 before has always been that there's not a lot of space
14 in the district office, so that space was a
15 consideration. But I certainly walked away from that
16 meeting thinking those tapes are going to be kept six
17 months to a year.

18 Q. Do you remember at the board meeting on November
19 the 1st whether Alan Bonsell said anything about the
20 tapes or tape of the October 18th meeting?

21 A. I do remember Alan Bonsell saying something to
22 the effect, well, of course, we would destroy the tapes.
23 We might be involved in a legal matter.

24 Q. Do you remember anything else that was said on
25 that meeting of November the 1st, 2004?

1 A. No.

2 Q. Do you remember Noel Weinrich saying anything?

3 A. Not that I can -- I mean, that might have been
4 the meeting that he got really upset and left the
5 meeting because he was -- that might have been the
6 meeting that he got really, really angry and because
7 apparently Bill Buckingham had said something about his
8 patriotism and his religious faith, and it had something
9 to do with, you know, his religion is between his God
10 and himself.

11 Q. Please turn to Exhibit, Plaintiff's Exhibit 669.
12 Do you have that in front of you?

13 A. I do.

14 Q. Have you seen it before?

15 A. Yes.

16 Q. What is it?

17 A. It's an article by Joseph Maldonado from the York
18 Daily Record dated November 2nd, 2004.

19 Q. Did you read it on or about that time?

20 A. Yes.

21 Q. Now I'd like you to look at that and tell us
22 whether -- read it first, please. And when you're done
23 reading it, just put it down for a second, and then tell
24 us if it helps you remember anything else that happened
25 at that meeting.

1 A. Yes, I do remember a few more things after seeing
2 this.

3 Q. Please tell us what you remember.

4 A. I do remember Casey Brown making the suggestion
5 that certainly this would be appropriate in a world
6 religion class. I don't remember exactly what she said.
7 Or something like that. And I remember Larry Schnook
8 asking who had donated the books. I also remembered
9 something else that I now forgot.

10 Q. You can look at it again.

11 A. I'm sorry. Oh, Brian Rehm also asked about
12 listening to the tapes.

13 Q. Now if you would please turn from that exhibit to
14 what has been marked as Plaintiff's Exhibit 127. Do you
15 have that in front of you?

16 A. Yes.

17 Q. What is that?

18 A. That's the district newsletter that was sent to
19 the households in Dover.

20 Q. Did you receive a copy of that?

21 A. Yes.

22 Q. How did you receive that?

23 A. In the mail.

24 Q. Now Mrs. Callahan, I just want to ask you a
25 couple other questions. Do you believe the actions of

1 the Dover Area School District Board of Directors have
2 caused you harm?

3 A. Yes.

4 Q. How?

5 A. I think in several ways. First was that my
6 daughter, in 9th grade, did not have a biology textbook
7 to take home because there were board members looking
8 for textbooks that included Darwinism or included
9 creationism.

10 Secondly, I had seen an e-mail from a professor
11 in Texas that warned that, if Dover continued on this
12 path of including intelligent design in their biology
13 curriculum, he would have a hard time considering Dover
14 students into his program, which made me think, okay, if
15 that's in Texas, what about some of the very competitive
16 schools in our area? What would they consider? You
17 know, would students about to graduate have a more
18 difficult time getting accepted in those colleges?

19 Another area that I think it is extremely harmful
20 to all the students, I mean, not just my daughter, but
21 all the students who are attending the high school. I
22 think it's clearly an attempt to change the definition
23 of science. One, by introducing intelligent design,
24 saying that is a scientific theory, but also by
25 demeaning, if you will, the theory of evolution.

1 When you introduce -- so there's students that
2 will be graduating from Dover not having a clear
3 understanding of what science really is. And then when
4 you introduce intelligent design into the biology
5 curriculum, it says, okay, it's so complex at this
6 point, it's an intelligent designer.

7 Well, that really stops a student from thinking
8 more about that subject. I mean, I think it's really
9 absurd to think that a school district could hinder a
10 student's natural curiosity into researching an area
11 further.

12 And then the area also that's important is
13 intelligent design is clearly religious. It's not my
14 religion. I am very upset about the idea of a public
15 school trying to influence my daughter's religious
16 beliefs. And that probably is the most harmful.

17 MR. HARVEY: I have no further questions.

18 THE COURT: All right. Thank you, Mr.
19 Harvey. Mr. Gillen, cross-examine.

20 MR. GILLEN: Thank you, Your Honor.

21 **CROSS EXAMINATION**

22 BY MR. GILLEN:

23 Q. Good afternoon, Mrs. Callahan.

24 A. Good afternoon.

25 Q. Pat Gillen. We met at your deposition.

1 A. Yes.

2 Q. I'm going to ask you a few questions today. Mrs.
3 Callahan, you've testified that you had attended a board
4 retreat for Dover Area School District in January of
5 2002, correct?

6 A. Yes.

7 Q. But you don't remember anything from that
8 particular board retreat?

9 A. I can't remember anything specifically about that
10 board retreat.

11 Q. You attended a board retreat in March, March
12 26th, 2003, correct?

13 A. Yes.

14 Q. These retreats were not deliberations made --
15 well, they weren't for the purpose of deliberating on
16 district policy, is that correct?

17 A. That's correct.

18 Q. No votes were taken?

19 A. I'm sorry. I'm having trouble hearing you. I'm
20 sorry.

21 Q. That's quite all right. No votes were taken?

22 A. Right.

23 Q. They were not official meetings of the school
24 board?

25 A. No.

1 Q. Now you've testified that there was a portion of
2 that board retreat on March 26th, 2003, where Richard
3 Nilsen invited comments from the Board members?

4 A. Yes.

5 Q. And he solicited issues that might be of interest
6 to the Board members, correct?

7 A. I'm sorry.

8 Q. He solicited input from the Board members about
9 issues that might be of interest to them, is that
10 correct?

11 A. Yes, the board members knew to bring their issues
12 or concerns to that board retreat.

13 Q. And that go-around session took about two
14 minutes, correct?

15 A. Possibly. I remember that the administrators
16 were each given three minutes. They took a little
17 longer.

18 Q. All right. But the go-around session from the
19 board members was about two minutes?

20 A. Probably.

21 Q. Okay. I believe you've testified in deposition
22 that you don't recall any comments that were made
23 concerning the issues raised by Alan Bonsell at that
24 March 26th, 2003, retreat?

25 A. No, I do remember comments Alan Bonsell made at

1 the March 26th, 2003, meeting.

2 Q. Yes. Forgive me if my question was not precise.
3 You don't remember other board members discussing the
4 issues he raised?

5 A. No.

6 Q. I believe you've also testified that you don't
7 remember any discussions that you had with Alan Bonsell
8 about creationism in 2003?

9 A. Correct.

10 Q. You don't remember any mention of creationism at
11 public meetings in 2003?

12 A. Correct.

13 Q. You don't recall Alan Bonsell doing anything to
14 implement any desire to have creationism taught during
15 2003?

16 A. Not to my knowledge.

17 Q. I think you've testified that you have a
18 Bachelor's of Science?

19 A. Yes.

20 Q. Okay. Now if I'm correct, you were not
21 re-elected in 2003, correct?

22 A. Correct.

23 Q. Is it true that several persons who ran for
24 office in 2003 are currently on the Board?

25 A. I think so.

1 Q. Okay. Now you've testified that the purchase of
2 the biology textbook was not approved in 2003, correct?

3 A. The approval to purchase the book was not in
4 2003, is that what you said?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. And you said that you made a motion for
8 the purchase of the biology textbook?

9 A. All of those textbooks in August of 2003.

10 Q. Well said. You say that that motion died for
11 lack of a second?

12 A. Yes.

13 Q. At the time you made that motion, Casey Brown was
14 on the Board, correct?

15 A. Yes.

16 Q. And Jeff Brown was on the board, correct?

17 A. Yes.

18 Q. And Angie Yingling was on the Board, correct?

19 A. Yes.

20 Q. They did not second your motion?

21 A. No one seconded the motion that I recalled. I
22 don't recall any vote being taken. My memory is, it
23 just died for lack of second.

24 Q. That's fine. Do you recall expressions of fiscal
25 concerns surrounding the purchase of textbooks in 2003?

1 A. No.

2 Q. Do you recall -- can you say there were none?

3 A. I can't say that there were none. I know that I
4 don't recall any conversation about that because,
5 subsequent to that time, I believe it was Dr. Nilsen,
6 and I believe it was \$50,000.00 was the amount that was
7 allocated for the purchase of those books was set, put
8 in a separate fund, so that if the books weren't
9 approved in that current fiscal year, at least the money
10 that had already been approved could be used in a
11 subsequent year, and that might help not -- that might
12 help the curriculum cycle from not getting really messed
13 up.

14 Q. Okay. So money was put aside, escrowed, I
15 believe is the term you used in your deposition?

16 A. Okay, thank you.

17 Q. For the purchase of biology books?

18 A. Yeah, and chemistry and the family consumer
19 sciences.

20 Q. Do you recall a discussion that the books being
21 used for the instruction of biology in 2003 weren't
22 current?

23 A. I don't remember a discussion. I mean, I don't
24 remember a discussion about it, no.

25 Q. Okay. You've testified that the books didn't

1 match the curriculum, correct?

2 A. That's what was my understanding, that the books
3 -- that there had been a curriculum change because of
4 standards, and I think maybe what was now being taught
5 in the middle school, it changed to the high school,
6 that it didn't match the curriculum was my understanding
7 as to why, at least in part, why the science department
8 was recommending a more current science book. And it's
9 been repeated and repeated and repeated. It's always
10 good to have a more current science book.

11 Q. And the change in standards that were reference
12 is the change in the Pennsylvania academic standards?

13 A. I believe so.

14 Q. Now you've testified that you attended the first
15 board meeting in June of 2004, correct?

16 A. The June 7th meeting?

17 Q. Yes.

18 A. Yes.

19 Q. And at that time, you asked why the text had not
20 been purchased?

21 A. Why they weren't on the agenda when the chemistry
22 books and the family consumer science books were on the
23 agenda to be approved at the next meeting.

24 Q. Okay. And I believe you testified you recall
25 some comments by Bill Buckingham?

1 A. Yes.

2 Q. Do you recall any comments by Sheila Harkin?

3 A. No.

4 Q. Any comments by Jane Cleaver?

5 A. No.

6 Q. Any comments by Angie Yingling?

7 A. No.

8 Q. I believe you testified that you didn't attend a
9 second board meeting in June, you were out of town?

10 A. Yes.

11 Q. And you came back in August, correct?

12 A. Right before school started, when that was.

13 Q. Okay. And by that time, the textbook had been
14 purchased, correct?

15 A. Yes, it's my understanding that the textbook had
16 been purchased at that time.

17 Q. Now you've testified that you informed the Dover
18 Area School District School Board that your research had
19 not uncovered any credible science -- scientist who were
20 willing to vouch for intelligent design theory, is that
21 correct?

22 A. Well, I didn't exactly do research, but I had not
23 seen any credible scientists who had confirmed that
24 Pandas and People book.

25 Q. Good enough. So when you made that statement to

1 the Board, it was based on your personal reading,
2 correct?

3 A. My personal reading and also information that had
4 been sent to me. I mean, it was primarily from
5 information that had been sent to me. I don't recall
6 reading anything on my own about the critiques Of Pandas
7 and People.

8 Q. Okay. And I think you've testified, you had the
9 sense that the Board ignored you?

10 A. Excuse me?

11 Q. You had the sense that the Board ignored you, is
12 that correct?

13 A. Yes.

14 Q. Did you ever ask them why they might be doing
15 that?

16 A. No.

17 Q. Do you recall commenting that the Board had spent
18 public money on legal fees in connection with the
19 curriculum issue?

20 A. Yes, I may have mentioned that it was my
21 understanding that they had already spent \$900.00
22 looking into this, and because it was my thought at that
23 time, \$900.00 can be a significant amount of money when
24 you're cuttings things from the budget.

25 Q. You said that you were on the district curriculum

1 advisory committee in 2004?

2 A. Yes.

3 Q. And you received communications from Mike Baksa
4 regarding the contemplated curriculum change?

5 A. Yes.

6 Q. Based on your personal reading, you've testified
7 that you do not believe that intelligent design theory
8 is a scientific theory, correct?

9 A. Yes.

10 Q. Did you ever ask other board members about
11 whatever reading they did?

12 A. I know at one of the Board members -- board
13 meetings, I did distribute at least the first part -- it
14 was a copy of the first part of the National Geographic
15 article that came out about a year ago, and it had the
16 definition of theory in it. I did distribute that to
17 all board members because I was thinking, you know,
18 maybe the problem was that the school board members just
19 really didn't understand the scientific definition of
20 the word theory.

21 And also at one of those meetings, now that
22 you're asking me, I'm remembering that I had a copy of
23 an article from the -- a New York Times Sunday magazine.
24 I think it was the Genesis Project was the name of that
25 article. And it talked about all -- a lot of the

1 scientific discovery behind origins of life. I mean, I
2 can go a little bit into that, if you would like, what
3 they were referring to. If you'd like me to, I can.

4 Q. No, that's all right. That's fine. I know that
5 you did some reading and you brought some reading to the
6 attention of the Board. That's fine. Do you object to
7 the book of Pandas being in the library?

8 A. No.

9 Q. If I'm correct, no child of yours has actually
10 attended a biology class at which the statement was
11 read, is that correct?

12 A. That's correct.

13 Q. I believe you've testified that you don't recall
14 Mr. Buckingham making any statement that this country
15 wasn't founded on Muslim beliefs or evolution?

16 A. I know I don't recall him saying anything about
17 the Muslim beliefs part.

18 Q. There's been at least one occasion in which you
19 personally have called a reporter and asked for a
20 retraction, is that correct?

21 A. Yes.

22 Q. Mrs. Callahan, it's your belief, based on what
23 you know, that intelligent design is religion, correct?

24 A. Yes.

25 Q. Do you still have your book of exhibits in front

1 of you?

2 A. The ones that --

3 Q. Yes.

4 A. Yes.

5 Q. Mrs. Callahan, I ask you to look at Exhibit 679,
6 which was shown to you earlier today. Would you look
7 that over, please? If you look at that article, Mrs.
8 Callahan, you'll see that it attributes a statement to
9 Bill Buckingham which says, board members are still fine
10 tuning matters, including any potential legal issues
11 that might arise from using Pandas in the classroom. Do
12 you see that?

13 A. Yes.

14 Q. Have you looked at that?

15 A. Pardon me?

16 Q. Have you looked at that? Do you remember Mr.
17 Buckingham saying that at that -- on or about September
18 8th, 2004?

19 A. I do recall him saying something about fine
20 tuning.

21 Q. Do you recall him saying anything about
22 consulting legal counsel?

23 A. No.

24 Q. But you can't say he didn't say that?

25 A. Oh, no, I can't say he didn't say that.

1 MR. GILLEN: I have no further questions,
2 Your Honor.

3 THE COURT: All right. Thank you, Mr.
4 Gillen. Mr. Harvey, any redirect?

5 MR. HARVEY: No redirect, Your Honor.

6 THE COURT: All right. Ma'am, thank you.
7 You may step down. And let's take the exhibits that we
8 have for this witness.

9 MR. HARVEY: Your Honor, P-641.

10 THE COURT: All right. 641 is the exhibit
11 that had to do with the retreat information, I guess,
12 with the inner lineations in her handwriting, is that
13 correct?

14 MR. HARVEY: With the exception of the
15 handwriting, Your Honor -- oh, yes, that's correct.
16 Yes, we move that entire exhibit into evident.

17 THE COURT: Any objection?

18 MR. GILLEN: No objection, Your Honor.

19 THE COURT: All right. 641 is admitted.
20 P-42, I have next, is the June 7th, 2004, planning
21 meeting agenda. Are you moving for the admission of
22 P-42?

23 MR. HARVEY: We are moving for the admission
24 of that, Your Honor.

25 MR. GILLEN: I object, Your Honor. There

1 are handwritten notations which have no foundation.

2 THE COURT: All right. Let's look at 42.

3 MR. HARVEY: Your Honor, we're not moving
4 for admission on the handwritten notation, just the
5 exhibit on --

6 THE COURT: Now wait.

7 MR. HARVEY: We're not moving for admission
8 of the handwriting, just the exhibit itself.

9 THE COURT: Well, isn't the handwriting on
10 the exhibit?

11 MR. HARVEY: Your Honor, it is -- the
12 handwriting is on the exhibits. It wasn't this
13 witness's handwriting. And so I did not authenticate it
14 or ask her to look at it.

15 THE COURT: Well, that's the problem, unless
16 you want to redact it.

17 MR. HARVEY: I'm perfectly willing to redact
18 it.

19 MR. GILLEN: From my part, Your Honor, I
20 believe that we have in evidence between us a clean copy
21 of the official document, which is the planning meeting
22 agenda for June 7th, 2004. I have no objection to
23 admission of that document without handwritten
24 notations.

25 THE COURT: All right. Well, somehow you're

1 going to have to redact 42 so that it becomes a clean
2 copy. We'll call it P-42. So it will come in as P-42
3 without the handwriting. So that's admitted. All right
4 now. P-44, P-46, and P-679 respectively are the June
5 8th, June 9th, and September 8th, 2004, records -- I'm
6 sorry, articles from the York newspapers. Now I don't
7 know if you want to move them in.

8 MR. HARVEY: We do want to move them in.

9 THE COURT: You're doomed to fail if you do
10 at this point.

11 MR. HARVEY: Actually, we don't intend to
12 move them in for the truth of the matter asserted right
13 now. We intend to move them in. This witness testified
14 she read them, so we would move them in, not for the
15 truth of the matter asserted, but we do reserve the
16 right to move them in for that purpose later in the
17 proceeding.

18 MR. GILLEN: No legitimate purpose has been
19 given for admission of the exhibit.

20 THE COURT: No, I won't admit them at this
21 point. I won't deny you the opportunity to go back and
22 do it. I see no purpose of admitting them, particularly
23 in a bench trial, at this point. So I will not admit
24 those. They were properly used to refresh her
25 recollection. Talk to co-counsel.

1 MR. HARVEY: I actually don't need to talk
2 to co-counsel. We're not -- she testified that she --

3 THE COURT: Are you sure?

4 MR. HARVEY: I'm quite sure. She testified
5 that she read these at the time. One of the issues in
6 this case is the harm that's been sustained by these
7 Plaintiffs. That goes to her knowledge of what
8 happened. She read them. And it's all part of
9 background knowledge, and that's why I say we're not
10 offering them for the truth of the matter asserted.
11 There's going to be other witnesses who are going to
12 testify.

13 THE COURT: I understand that. But what Mr.
14 Gillen is obviously doing is, he's protecting the record
15 because there is an issue as to the truth of the matter
16 asserted in the articles, and how do you unring the bell
17 on the articles?

18 MR. HARVEY: Well, the Court has seen -- the
19 finder of fact has seen the articles because we referred
20 to them in the testimony. In other words, there's no
21 way to unring the bell necessarily, but --

22 THE COURT: That's my job.

23 MR. HARVEY: That's your job, exactly.
24 They're not being offered for the truth of the matter
25 asserted.

1 THE COURT: You can unring this bell. I
2 don't know how else we do it. Mr. Gillen, what did you
3 want to say?

4 MR. GILLEN: The law observes a distinction
5 between what's shown and what's admitted.

6 THE COURT: I have to agree with Mr. Gillen
7 as to that. I'll revisit the articles. You know, I
8 gave you latitude in allowing you to have her refer to
9 them. If you have a better argument than that, I'll
10 hear it.

11 MR. HARVEY: I have only one other argument,
12 Your Honor.

13 THE COURT: I was going to say, if you don't
14 want to assert it now, I'll hear it later.

15 MR. HARVEY: I think I'll let you know.
16 That is that, we're offering them for the effect on the
17 community. One of the issues in this case is
18 endorsement of religion, and these were published to the
19 Dover community, and there will be testimony that they
20 were seen by others. And I think they are relevant for
21 that purpose. Again, that's not a hearsay purpose.

22 THE COURT: Well, as we know, there remains
23 an issue as to whether or not you're going to be able to
24 have testimony by the reporters who you've called as
25 fact witnesses. I think the testimony of those

1 reporters could allow the articles to be admissible
2 under the residual exception in Rule 807. We're not
3 there yet.

4 So rather than chew this up at this point,
5 that's why I say, I'm not going to admit them on the
6 effect prong under Lemon at this point, but I'll --
7 we'll revisit that if and when that's what you're left
8 with. Now you may not be left with that, depending on
9 what you get. Based on what I'm hearing, I don't know.
10 I want to talk to counsel at the break about that issue.
11 But that's another issue altogether. All right.

12 So we'll not admit them at this time, but
13 without prejudice to reassert that argument. I'll rely
14 on you to to reassert the argument unless and until you
15 have some other mechanism to get them in under 807. All
16 right. That leaves then P-668, which is the notes and
17 statement, which I assume you're not moving that in.

18 MR. HARVEY: I am not moving that into
19 evidence.

20 THE COURT: All right. P-78 is the October
21 4, 2004, planning meeting agenda. Any objection to
22 that?

23 MR. GILLEN: If you'll forgive me, Your
24 Honor. Let me take a look at it.

25 THE COURT: Likewise, P-87, you can check

1 that, is the October 18th, 2004, board meeting agenda.

2 MR. GILLEN: Your Honor, we have no
3 objection to the admission of P-78.

4 THE COURT: How about 87 then?

5 MR. GILLEN: Your Honor, we have no
6 objection to P-87.

7 THE COURT: All right. P-78 and P-87 are
8 admitted. Finally, I have, subject to Mr. Harvey, if I
9 didn't get everything, I have P-669, which is likewise
10 the article. I would intend to rule the same way.

11 MR. HARVEY: Understood.

12 THE COURT: As to the York Daily Record,
13 November 2, 2004, article that makes up P-669. Again,
14 without prejudice, we'll not admit it at this time, but
15 we'll allow counsel to argue that point later.

16 MR. HARVEY: Understood, Your Honor.

17 THE COURT: All right.

18 MR. HARVEY: I don't believe we addressed
19 P-127, which I used with Ms. Kitzmiller.

20 THE COURT: P-127 is?

21 MR. HARVEY: That's a copy of a newsletter
22 that was sent.

23 THE COURT: Well, actually you put it up, my
24 recollection is.

25 MR. HARVEY: I'm sorry. It came in through

1 Mr. Miller. Never mind.

2 THE COURT: Like wise, I don't recall you
3 asked a question. You put it up, and I don't think you
4 ask a question anyway. Well, it's in, I think.

5 COURTROOM DEPUTY: Yes.

6 THE COURT: All right. Anything further,
7 Mr. Harvey?

8 MR. HARVEY: No, Your Honor.

9 THE COURT: All right.

10 MR. GILLEN: Your Honor, just for your
11 information, I understand the reporters have appeared
12 for the depositions but refused to comply.

13 THE COURT: Well, we'll take that up. I
14 want to talk to you at the break at that because I want
15 to clarify exactly what the circumstances are, unless
16 you feel that we need to -- are they assembled and
17 waiting for something now?

18 MR. GILLEN: No, Your Honor.

19 THE COURT: Have they adjourned?

20 MR. GILLEN: The deposition has been
21 adjourned due to the witnesses' failure to comply.

22 THE COURT: We'll take it up at the break
23 then. Mr. Harvey.

24 MR. HARVEY: The Plaintiffs call our next
25 witness, Plaintiff Bryan Rehm.

1 THE COURT: All right.

2 Whereupon,

3 **BRYAN REHM**

4 having been duly sworn, testified as follows:

5 COURTROOM DEPUTY: Spell your name for the
6 record.

7 THE WITNESS: Bryan Rehm. B-R-Y-A-N.
8 R-E-H-M.

9 MR. HARVEY: Your Honor, may I approach the
10 witness with a binder of exhibits?

11 THE COURT: You may.

12 **DIRECT EXAMINATION**

13 BY MR. HARVEY:

14 Q. Mr. Rehm, please tell us where you live?

15 A. 3690 Rock Creek Drive in Dover Township,
16 Pennsylvania, 17315.

17 Q. How long have you lived in Dover?

18 A. I moved in, I believe it was, in August of 2001.

19 Q. Are you married?

20 A. Yes.

21 Q. And do you have any children?

22 A. Four.

23 Q. Please tell us the ages and names of your
24 children?

25 A. Alex is 14. Paige is 8. Ian is 7. And Lucas is

1 15 months as of last Thursday.

2 Q. Are any of these children -- do any of these
3 children attend school in the Dover Area School
4 District?

5 A. Two of them are in the Dover Area School
6 District. A third one is charged under the Dover Area
7 School District but is handicapped and is in a special
8 class for that.

9 Q. Tell us what grades they're in, please?

10 A. First, third, and ninth.

11 Q. The child that's in 9th grade is at Dover Area --
12 Dover High School?

13 A. Yes.

14 Q. And is that child taking biology class right now?

15 A. She currently has biology class, yes.

16 Q. Are you married?

17 A. Yes.

18 Q. What's your wife's name?

19 A. My wife's name is Christy.

20 Q. What does she do?

21 A. She is an English teacher.

22 Q. What is your job?

23 A. I am a physics teacher.

24 Q. Where do you teach physics?

25 A. In a school outside of York County.

1 Q. What's the name of it?

2 A. Is that necessary at this point?

3 Q. It's not necessary.

4 A. Okay.

5 Q. Can you please tell us your education? Where did
6 you graduate from high school?

7 A. I graduated from high school in 1994 from Central
8 Dauphin East High. It's a suburb of Harrisburg.

9 Q. Did you attend college?

10 A. Yes, I did.

11 Q. Where did you go to college?

12 A. I did my undergraduate work at Lebanon Valley
13 College in Anville, Pennsylvania. I've taken graduate
14 work in a number of different places, including what
15 used to be Western Maryland College. It's now McDaniel.
16 Penn State York and Penn State Main Campus.

17 Q. And were you ever a teacher at Dover High School?

18 A. Yes, I taught there for two school years.

19 Q. What two school years were though?

20 A. I believe it was the 2002-2003 school year and
21 the 2003-2004 school year.

22 Q. And what did you teach?

23 A. I taught science. My main responsibility I was
24 hired for was physics. And in addition to physics, they
25 put a physical science court course in my schedule and a

1 course at the time that was titled science technology in
2 society, which is an environmental and ecology course.

3 Q. When you were at Dover High School, who was your
4 supervisor?

5 A. My supervisor as far as department goes was
6 Bertha Spahr. She sort of maintained the department.
7 But I would directly be supervised by the building
8 principal, who was Trudy Peterman at the time.

9 Q. I want you to think back now to the 2002-2003
10 school year and tell me whether you remember any
11 conversations with Bertha Spahr about a board concern
12 about the biology curriculum?

13 A. Yes, there was many occasions on which we had
14 such conversations. There was more than myself and
15 Bertha Spahr present. It was common practice that we
16 had a lunch period together, and she was my mentor, so
17 to speak, so I would eat lunch in her room along with
18 Rob Eshbach on most days and sometimes another teacher
19 who has since left the district.

20 We'd talk about things going on in the classroom,
21 things going on in the district, etc., and quite
22 frequently concerns of board members and the biology
23 curriculum would come up. In addition, Mr. Baksa would
24 frequently stop by because he would relay the
25 information to us.

1 Q. Tell us what you can recall about those -- can
2 you recall any specific conversation?

3 A. As far as date and time, not exactly. The
4 context of them, it always centered around biology. And
5 initially, I just didn't think much about it. I was
6 eating lunch, and I was there for guidance, if I was
7 messing anything up. But generally, I'm trying to get
8 done and thinking about the next class coming up.

9 Those things that came up were biology, biology,
10 biology, and when pinned down for, what about biology,
11 well, the evolution unit needs to be balanced.

12 Q. Did Mr. Baksa in those conversations tell you
13 about a board concern about the biology curriculum?

14 A. Yes, he did.

15 Q. What did he say?

16 A. The concern was that biology, the evolution unit
17 needed to be balanced. And at some point in time,
18 unfortunately I can't say if it was Mr. Baksa that told
19 me or Bertha Spahr, it was the 50/50 with creationism
20 concern.

21 Q. Did they mention any particular board members
22 having that concern?

23 A. At that point in time, initially I did not know
24 who the Board member was, just that it was the school
25 board members, and it was actually pluralized at that

1 point in time. It did not indicate a single member but
2 several members.

3 Q. Did there come a time when you were told that
4 there was any particular board members?

5 A. Much later on, it came out to that. At that
6 point in time, I was told it was Alan Bonsell.

7 Q. Now do you remember having a meeting with Mr.
8 Bonsell to discuss his concerns about the biology
9 curriculum?

10 A. Yes, I do.

11 Q. Can you tell us approximately when was that
12 meeting?

13 A. It was in the morning. As far as much closer
14 than that, I don't recall. My planning period is in the
15 morning, and it was during my planning period. A lot of
16 science department, with except for maybe one teacher,
17 had common planning time together, and that's when they
18 scheduled the meeting for. It was, I'm guessing, in the
19 spring of '03.

20 Q. Okay. You say you're guessing. Do you have any
21 reasonable approximation of when this was?

22 A. Unfortunately, no.

23 Q. This was certainly while you were a teacher at
24 Dover Area?

25 A. Yes, yes, otherwise I wouldn't have been invited

1 to the meeting. I would have had no business there.

2 Q. Tell us who you can recall at the meeting?

3 A. For certain, it was myself, obviously. Bertha
4 Spahr was there. Jennifer Miller, Rob Linker, Robert
5 Eshbach, Trudy Peterman, Alan Bonsell from the school
6 board. Mike Baksa was there to introduce us. And there
7 others, I think, were there, but I'm not certain, so I
8 will not mention them at this time.

9 Q. Just to get a little clarity on time. What was
10 your -- when did you leave your job at Dover High
11 School?

12 A. I left Dover High School, I believe my resume
13 shows official, June 21st, 2004.

14 Q. And we're going to take in just a couple minutes
15 of a board meeting on June the 7th, 2004. Do you recall
16 that board meeting?

17 A. Yes.

18 Q. Was this meeting that you're discussing now with
19 Mr. Bonsell and the others, was this prior to June the
20 7th?

21 A. Yes, definitely.

22 Q. Was it months prior to that?

23 A. At least.

24 Q. How was the meeting arranged?

25 A. The meeting was arranged by Mr. Baksa. He had

1 been relaying information to the science teachers,
2 primarily Bertha Spahr's the department chair, during
3 these lunch conversations where he'd stop in. And we
4 repeatedly explained to him, we're not going to do this.

5 We're not going to balance evolution with
6 creationism. It's an inappropriate request. It's
7 inappropriate. There's no educational purpose for it.
8 It's not a good decision. And we would lay out as many
9 reasons as we could and send them back with Mr. Baksa to
10 relay to the school board members or Alan Bonsell.

11 And, you know, the next day or two days later,
12 Baksa is back in lunch again with the same questions and
13 the same concerns. And we explained this to you
14 already. So after numerous times, I mean weeks of this,
15 he said, well, how about if we just get you together
16 with him? And then somehow through Mr. Baksa and Dr.
17 Peterman, the meeting was arranged.

18 Q. Who was Dr. Peterman?

19 A. Dr. Peterman was the high school principal. And
20 the meeting ended up being held in her office, which was
21 in the old principal's office before the construction
22 project.

23 Q. Can you remember what Mr. Bonsell said at that
24 meeting?

25 A. The general context of it started with, that he

1 was concerned about biology because he felt that we
2 weren't fulfilling the district's mission statement, and
3 that the district's mission statement was along the
4 lines of that, the parents and teachers and faculty and
5 administration work together to nurture the kids and to
6 whatever beneficial things for the community, and
7 they're supposed to be working together.

8 And he felt that because of evolution, that we
9 weren't doing that, that kids were going to come into
10 the evolution lesson, and they're going to go home and
11 sit down at the dinner table with their parents, and
12 they're going to talk about what they learned in class
13 that day, and the parents are going to have to tell it
14 the kids, well, your teachers are lying to you.

15 And when pressed for why that was, he explained
16 to us, well, that is because he doesn't believe in
17 evolution, because that's against his religious views,
18 which were consistent with what I would label young
19 earth creationism.

20 Q. Did he mention anything in that conversation
21 about the age of the earth?

22 A. He mentioned something that the earth is closer
23 to 6000 years old.

24 Q. During that conversation, do you recall him using
25 the word creationism?

1 A. I remember the term creationism and Alan
2 Bonsell's name being stuck together. And unfortunately,
3 I can't specifically place it at that meeting or if I
4 heard it previously from Mike Baksa at the lunch
5 conversations.

6 Q. Now what did the teachers -- do you recall what
7 the teachers said in response to Mr. Bonsell?

8 A. The teachers had gone in unified because we knew
9 that they wanted to change the biology curriculum. They
10 had asked that the science teachers do it, to put
11 creationism ideas into it. And we had basically reached
12 a uniform decision that it's inappropriate and we're
13 going to stick together.

14 But at the same time, we're teachers and we need
15 to be professional and we need to be civil going into
16 this conversation. So our objective was to gather as
17 much data as possible, because we're science teachers
18 and that's the way we try to do things, and see where
19 that would lead us to. The concerns that were expressed
20 from Alan Bonsell were dealing primarily with the ideas
21 of macro evolution, and he expressed concern about
22 monkeys to man.

23 And once we got that and figured out what his
24 concerns were, we took the approach of, let's educate
25 Mr. Bonsell as to what the biology evolution unit

1 actually covers, which we don't teach monkey to man.
2 It's not an essential part of what we need to do to get
3 the students ready for the state standards test.

4 So we took that information. We acknowledged his
5 concern. We understood why he was concerned because
6 nobody wants to have to go home and hear that their
7 children are learning contradictory things. And we
8 certainly don't want parents telling the kids the
9 teachers are lying. That's not our job. That not our
10 objective. And that's not our intent by any stretch of
11 the imagination.

12 From there, we proceeded to explain to him how we
13 would basically teach the general evolution unit, what's
14 taught, what are the purposes of it, what's the content
15 of it, explaining that we're focusing on the micro
16 evolution processes. Yes, addressing it with natural
17 selection. But these are the things that the kids are
18 going to need. That's going to be covered on the test
19 for the state exams.

20 That's what they're going to need if they choose
21 to go to college and want to major in anything dealing
22 with medicine or any of the future technology and
23 careers that ideally we're preparing our students to be
24 qualified for.

25 Q. You used two terms, macro evolution and micro

1 evolution?

2 A. Uh-huh.

3 Q. And I don't want to get a science course, but I
4 do want to get just your, tell us if you would, what you
5 meant by those terms, macro evolution and micro
6 evolution?

7 A. Macro evolution is generally applied where you're
8 seeing large changes in the types of organisms. For
9 example, in the analogy of monkey to man, or more
10 correctly, the pre-ancestors of both monkeys and man, to
11 those separate species would be considered macro
12 evolution. There is very large changes in the
13 physiology and the, possibly, the body structures,
14 things of that nature.

15 Whereas micro evolution is what we typically look
16 at as the change over time. You're looking at small
17 changes. For example, diseases become resistant to
18 bacteria but still being the same basic disease. The
19 reason why we have different variations of tuberculosis
20 and why we have different variations of the AIDS virus
21 and those types of things.

22 Also dealing with pesticides and resistance to
23 pesticides. That would be the micro evolution where you
24 still have a grasshopper, but now because of the
25 influence, in this case human influence with the

1 pesticide, the pesticide will no longer kill the
2 grasshopper. You now have to change pesticides to find
3 another way of eradicating it.

4 Q. Was there any resolution from this meeting
5 between the teachers and Mr. Bonsell?

6 A. As I left the meeting, I recalled no resolution.
7 It was getting on this and taking the majority of the
8 planning period. And the teacher's schedule, you're
9 concerned about your planning period. It's very
10 important to you. It's the only time you really have
11 where you can focus on getting things done that you
12 can't do when students are in the room; grading papers,
13 updating grades, making phone calls to parents, things
14 of that nature, writing your lesson plans to submit.
15 And I don't recall any resolution whatsoever. I was in
16 a rush to get back and get my work done.

17 Q. Do you recall, after this meeting with Bonsell,
18 being asked to watch a video about evolution?

19 A. Yes.

20 Q. Who asked you to watch that video?

21 A. As far as I can remember, the request came
22 through Michael Baksa stating that the school board
23 wanted us to watch it.

24 Q. Did they say what the name of the video was?

25 A. Initially, I did not know the name of the video.

1 I did not know the name of the video until we sat down
2 and watched it.

3 Q. What was the name of the video?

4 A. The name of the video was Icons of Evolution.

5 Q. And who watched it with you?

6 A. The majority of the science department. Myself,
7 Rob Eshbach, Jen Miller. I believe Bertha Spahr was
8 there. Leslie Praul. Rob Linker. And I don't know if
9 if anybody else was or not.

10 Q. Let's go back for just a second. When you had
11 the meeting with Mr. Bonsell, did he have any position
12 on the Board or did you have an understanding at the
13 time that he had a position on the Board?

14 A. My understanding at the time was that he was part
15 of the curriculum committee. In fact, I believe I was
16 told he was the curriculum committee chair, which is why
17 we were having the meeting with him dealing with
18 curriculum issues.

19 Q. Now let's go to where we just were. Following
20 this occasion on which you were asked to watch a
21 videotape, were you asked to meet with anybody with
22 regard to that videotape?

23 A. I don't understand your question.

24 Q. Did anyone ask you, after you watched the
25 videotape, to have a meeting with any board member?

1 A. There was a request, not of me specifically, but
2 of the science department, that we should be meeting
3 with school board members. The video, as I recall, was
4 watched late in the school year. And we sat down as a
5 department and watched, and we were discussing amongst
6 ourselves, and Mike Baksa came back in at that point in
7 time.

8 He was basically, well, what did you think? Once
9 again, well, how about if you communicate that directly
10 to the board members? And there was some type of
11 meeting set up.

12 Q. And do you know, did he say who that meeting
13 would be with?

14 A. The meeting, as I understand, ended up being with
15 Bill Buckingham, but I don't know if he said at that
16 point in time to meet with Bill Buckingham or if he just
17 simply said a school board member.

18 Q. Did you attend that meeting?

19 A. I could not attend that meeting.

20 Q. Why not?

21 A. My wife was pregnant at the time, and I was
22 getting out of school as quickly as possible to get
23 home. She was eight months pregnant or so. The baby
24 was due the 10th of June. It ended up coming out on the
25 23rd. This was late in the school year, and I was more

1 concerned about my family than I was the Icons of
2 Evolution video.

3 Q. Now this occasion on which you watched the video,
4 was this prior to the June 7th, 2004, board meeting?

5 A. I'm suspecting that it was. June 7th was getting
6 very late in the school year. But I cannot place those
7 dates specifically sequentially.

8 Q. Did you attend a board meeting on June the 7th of
9 2004?

10 A. Yes, I did.

11 Q. Did you attend any other board meetings in June
12 of 2004?

13 A. I attended the second June meeting as well which,
14 I think, was on the 14th.

15 Q. Why did you attend those meetings?

16 A. The June 7th meeting was at the urging of Dr.
17 Peterman. Periodically, when there's something going on
18 with the school board that the teachers would be
19 concerned of, she'd let us know. She'd walk into the
20 lunchroom and find us or let us know by some other
21 means.

22 In this particular case, she explained to us that
23 there is a concern over textbooks that hadn't been
24 ordered, that should have been ordered, and it would be
25 a good idea if the faculty showed support and solidarity

1 and as many as possible could attend the meeting for
2 that reason.

3 Q. Do you remember why you attended the June 14th
4 meeting?

5 A. The June 14th meeting, I attended for probably a
6 similar reason, but also as a follow-up to the June 7th
7 meeting. Since there weren't all the answers given on
8 June 7th meeting, June 14th was a follow-up meeting. It
9 made sense to follow-up and see how it finished out.

10 Q. Can you separate those two meetings in your mind
11 so that -- let me finish my question here -- so that you
12 can remember what happened at one meeting versus
13 happened at the other one?

14 A. Not very well, not without any type of
15 refreshing.

16 Q. Just tell us, if you can, without respect to
17 which meeting it was, tell us what you can remember that
18 happened at either of those meetings?

19 A. I walked in. I was a little bit late to one of
20 them. And I sat near the back. At that point in time,
21 they ran the Board meetings. They still had the tables
22 set up from the lunches, because they hold the Board
23 meetings in the 5th and 6th grade elementary building.
24 And I sat at a table. If I'm at the front of the Board
25 room, it would be to the Board's left near the back.

1 I sat down with other science teachers and was
2 sort of asking, all right, what did I miss so far? The
3 first thing I can remember concretely where I started to
4 pay attention to the front of the room was when Barrie
5 Callahan was asking during public comment about the
6 biology textbooks, why weren't they ordered, and what's
7 going on here.

8 Q. Do you remember specifically what she said?

9 A. At this point in time, it's not coming back to
10 me.

11 Q. Do you remember what was said to her in response?

12 A. I can't specifically say it's the 7th meeting,
13 but when asked that question, the response from Bill
14 Buckingham was, laced with Darwinism. In fact, actually
15 now I can pin that down. I apologize for the sidebar
16 here. That had to be at the June 7th meeting. Between
17 June 7th and June 14th was graduation that year.

18 And the senior speech made mention of that
19 comment, so it had already filtered down to the student
20 population at that point in time or else it wouldn't
21 have been there.

22 Q. Do you remember anything else about an exchange
23 between Barrie Callahan and the Board?

24 A. At this point in time, nothing is coming to me.

25 Q. Do you remember a student by the name of -- a

1 young man by the name of Max Pell?

2 A. Yes.

3 Q. Who's Max Pell?

4 A. Max Pell was a student I actually had the
5 previous year in my physics class and had graduated and
6 gone on to school. And I actually had a brief
7 conversation with him at some point that night. How are
8 you doing, Max? Good to see you. How's school going?
9 Those types of things. It's always nice to see your
10 former students.

11 Q. Do you remember whether that was the June 7th or
12 14th meeting?

13 A. Without a refresher, I don't recall.

14 Q. Do you remember what -- do you remember Max
15 speaking to the Board?

16 A. Yeah. At some point, I am suspecting it was
17 after Barrie's question about the textbooks and then the
18 relaying statement of laced with Darwinism, he got
19 relatively concerned and stood up, and showing Max's
20 mannerisms and nervousness, he stood up and was
21 questioning them about why? Why are you considering
22 this? How can you say that?

23 Q. Tell us what you can remember about the exchange
24 between Max Pell and the Board?

25 A. Aside from the concerns of, why are you doing

1 this, this is inappropriate, and I think you're taking a
2 risk here, Mr. Buckingham had responded. I couldn't say
3 specifically what. Off the top of my head, I don't
4 recall. But that's the first where I really saw the
5 school board meetings sort of going downhill and
6 degrading into not very positive discussions.

7 Q. Do you remember anyone saying at either meeting
8 something about balancing evolution with creationism?

9 A. I remember that comment, and I can't say which
10 meeting, but that comment had come up after the laced
11 with Darwinism. I can also remember conversations, and
12 I don't know once again if it was the June meetings or
13 the next meetings in October, when Alan Bonsell was
14 talking about, well, if you teach both sides, it doesn't
15 matter. There's no problem. You just can't favor one.

16 Q. Did he say what he meant by both sides?

17 A. Creationism, and the only other theory was
18 evolution.

19 Q. Do you remember anyone at either of these
20 meetings saying something about 2000 years ago?

21 A. Bill Buckingham, and I don't remember which
22 meeting, but, yeah, I heard it. It's one of those
23 things that I couldn't believe. It's not something you
24 should be saying running a public school.

25 Q. What did he say?

1 A. 2000 years ago, somebody died on a cross. Can't
2 somebody stand up and take a stand for him? That's
3 paraphrasing. I don't know if that's his exact words,
4 but it's close enough, and it's what he meant.

5 Q. Do you remember anyone at either meeting saying
6 something about this country being founded on
7 Christianity?

8 A. I remember hearing that also from Bill
9 Buckingham, but I couldn't tell you which meeting. And
10 I couldn't tell you if that -- was that said in October?
11 Aside from hearing it, I can't place it, which one. And
12 I know that I definitely heard it from Bill Buckingham.

13 Q. Do you remember a woman named Charlotte
14 Buckingham speaking at one of these meetings?

15 A. Yes.

16 Q. Tell us, what was your understanding at the time
17 of who Charlotte Buckingham was?

18 A. Initially, I didn't know until she stood up. And
19 at the board meeting, when you are going to speak in
20 public comment, you have to state your name and where
21 you live, much as we do at the introductory here. And
22 that's when I heard her for the first time.

23 Q. Did you have an understanding who she was?

24 A. At that point in time, yeah, I realized she was
25 Bill Buckingham's wife. And I'm not positive, but I

1 think she may have even said that or there was an
2 exchange between, you know, other board members, nice to
3 see you, Mrs. Buckingham, and things of that nature.

4 Q. Do you remember what she said at that meeting?

5 A. She had a prepared statement. She was flipping
6 pages. I don't know how many, but it was more than one.
7 And it was basically how Darwinism is a problem. We
8 need to look to the Bible. And she quoted many, many,
9 many Old Testament scriptures about why we need to be
10 referencing God in the classroom.

11 Q. Now I'd like -- do you remember anything else
12 that was said at either of those meetings, either by
13 board members or members of the public?

14 A. Bertha Spahr had stood up requesting, once again,
15 the considerations for the textbooks. Once again, I'm
16 having trouble if this was the June meeting or the
17 October meeting. She stood up more than once at
18 different meetings. I later stood up at different
19 meetings as well. And as far as pinning down dates,
20 unfortunately, I can't. It all sort of blends together.

21 Q. Do you remember speaking at either of these
22 meetings yourself, speaking in public to the Board at
23 either of these meetings?

24 A. At a meeting, yes. I've spoken at at least four
25 meetings, and they would have started in June probably.

1 I don't believe I waited until the October meeting to
2 begin speaking.

3 Q. Do you remember what you said?

4 A. I was concerned about the comments, in particular
5 dealing with laced with Darwinism and the references to
6 needing to balance out evolution. There was a
7 communication, as I was hearing it, from the school
8 board that the two ideas, you know, were in conflict and
9 you had to resolve them and that it was a scientific
10 debate. I'm a science teacher. I've taken many courses
11 in it. And there should be no debate as far as
12 scientific evidence goes. Science looks at the science.
13 Your religion is your religion. It's perfectly fine.

14 Q. Mr. Rehm, I just want you to tell me if you can
15 remember what you said?

16 A. Those are what I was saying. Those are the ideas
17 I was communicating to the board.

18 Q. Excuse me. Please go ahead.

19 A. Just, you know, there does not need to be a
20 conflict and you're taking a risk by doing this.

21 Q. Now can you remember anything else that was said
22 either by board members or members of the public at this
23 meeting or anyone else at this meeting or at either of
24 these meetings in June of 2004?

25 A. Off the top of my head, nothing is coming to me.

1 Dr. Peterman stood up and spoke on behalf of the book
2 request, I believe, as well. There was discussions of
3 the family consumer science book. And I believe Mrs.
4 Harkins was questioning, why are we getting this book
5 because it's so similar to the one we already have?

6 And then there's the explanation, well, there's
7 not enough of the same edition. And then there's
8 similar discussions about chemistry books and biology
9 books.

10 Q. Now I'd like you -- I'd like you to look at what
11 has been marked as P-46.

12 A. Okay.

13 Q. Have you had a chance to look at that exhibit?

14 A. Yes.

15 Q. Tell us what it is.

16 A. It's a newspaper article, I believe, from the
17 York Daily Record, dated June 9th, written by Joseph
18 Maldonado.

19 Q. Have you read it before today?

20 A. Yes, I was shown this article a few days ago.
21 And also, I would have read this article, but not from
22 here, in the actual newspaper when it was originally
23 published.

24 Q. Do you recall reading it at the time?

25 A. Yes. We were paying attention to what the school

1 board was doing and making sure we were checking the
2 papers every day because, unfortunately, it was turning
3 into a zoo, and we were concerned about the reflection
4 of that in the media.

5 Q. Now did you just read this just now?

6 A. Yes.

7 Q. Does it help you remember anything else that
8 happened at the -- at either of these board meetings?

9 A. It gives clarity to the things I was remembering
10 as far as positioning on the date of the 7th and the
11 14th. Some of the things in here that were said that I
12 had forgotten, specific quotes. That's what I remember
13 reading. And there was no discrepancy between what I
14 read then and what I heard the night or two nights
15 before.

16 Q. Sitting here right now, after having looked at
17 that, can you remember anything else that was said?

18 A. Am I allowed to look at it again?

19 Q. You can look at it again?

20 THE COURT: Sure.

21 BY MR. HARVEY:

22 Q. You just can't read it in.

23 THE COURT: Yeah, just don't read or excerpt
24 it directly. You can use it to refresh your
25 recollection.

1 THE WITNESS: What I had already stated
2 about Alan Bonsell commenting on, there's only two
3 theories, creationism and evolution. Bill Buckingham
4 additionally saying, dealing with the laced with
5 Darwinism comments. We need a book that gives balance
6 to the education. These are all the quotes I heard that
7 night that I read the next day and had no question
8 about, that's what was that said, that's what we heard.
9 The brain washing comment directed at Max Pell.

10 BY MR. HARVEY:

11 Q. Tell me what you remember about the brain
12 washing?

13 A. I remember hearing it.

14 THE COURT: Hold on, sir.

15 MR. GILLEN: Again, maybe I can, at the
16 break, we can get a little more clarification. I
17 understand if he wants to refresh his recollection, but
18 it seems that he's adding and he's reading the quotes as
19 if he's testifying to the truth of the quotes. That's
20 not proper.

21 THE COURT: Yeah, the distinction may seem a
22 little artificial, but what you have to do is read the
23 article and then respond to it rather than use it as
24 sort of a punch list as you go through. I think you've
25 answered the question at this point. But to the extent

1 there are other questions, when you have to refresh your
2 recollection by looking at the article, just respond
3 directly to him, and don't refer to what you're reading
4 in the article, if you would.

5 THE WITNESS: Okay.

6 THE COURT: There is a reason for that.

7 THE WITNESS: Please fix me if I step out of
8 line.

9 THE COURT: I will.

10 BY MR. HARVEY:

11 Q. Do you remember anything at that meeting being
12 said about brain washing?

13 A. Yes.

14 Q. Tell us what you remember about that?

15 A. Bill Buckingham said to Max Pell, did you ever
16 hear of brainwashing, something to that effect. When
17 you are told something enough times, it becomes fact.
18 And he mentioned that dealing with, it's what's not in
19 the paper, he was talking about liberal colleges and
20 people going to these levels of higher institution where
21 they are being brainwashed, such as Penn State.

22 Q. Now I want you to think about, do you remember
23 anyone at either of these meetings saying something
24 about liberals in black robes?

25 A. Yes.

1 Q. Tell us what you remember?

2 A. Sticks in my mind, once again, that's something
3 Bill Buckingham said, but I can't be certain. One of
4 these meetings, I did have the pleasure of sitting in
5 front of Alan Bonsell's father who talks during the
6 meeting, and basically said the same thing, these
7 liberals in black robes are taking away freedoms, and we
8 need to stand up and take them back.

9 Q. Did -- do you recall anyone saying anything about
10 the separation of church and state?

11 A. One of these meetings, it was mentioned once
12 again that it was a myth, and I heard that on more than
13 one occasion at the school board meetings.

14 Q. Was there any reference to tracing your roots to
15 monkeys at either of these meetings?

16 A. I remember hearing it and, unfortunately, I can't
17 tell you once again which meeting it was.

18 Q. Well, do you remember what you heard?

19 A. Yeah, you're not going to tell me that I came
20 from apes, and if you insist on it, which side of your
21 family came from apes?

22 Q. Do you remember Mr. Buckingham saying something
23 about having talked through a think tank?

24 A. At one of the meetings, yes. He was questioned,
25 well, who is this think tank, and he wouldn't give any

1 information. And at some meeting again, once again I
2 don't know if it was June or October, he mentioned about
3 how the textbook that was requested by the teachers
4 received an F from a think tank, and then would give no
5 further information on it whatsoever.

6 Q. Do you remember anything else that happened at
7 either of those meetings?

8 A. I don't know once again if this is June or if
9 this is October, but it was brought up about, you're
10 walking into dangerous ground, violation of separation
11 of church and state, which somebody, either Alan or may
12 have even been Noel or Bill at this point, was reminding
13 us, well, separation of church and state is a myth, and
14 said that even if the district was sued, he's been in
15 contact with a group that will defend the district for
16 free. Also, when asked, he would not say who that was.

17 Q. Following these June meetings, did you attend any
18 other meetings of the board that summer?

19 A. I did not attend anymore meetings during the
20 summer.

21 Q. Why not?

22 A. Had other things to do.

23 Q. And did you attend a board meeting on or about
24 October the 18th of 2004?

25 A. Yes, I did.

1 Q. Why did you attend that meeting?

2 A. I had been talking to people in the community.
3 Getting around to school year starting up. So that is
4 when a lot of thing started to happen again. And I
5 would run into some members of community when we were
6 out eating dinner, so forth. How are things going?
7 What's going on? How are things at the school? And I
8 heard rumblings of, well, the school board is doing this
9 creationism thing again, and you need to pay attention
10 to it.

11 Q. Do you remember running into Mr. -- excuse me,
12 Dr. Nilsen shortly before that meeting?

13 A. That's what I was getting to, yes. I believe it
14 was a Thursday night. I'm not positive. But my
15 daughter at Weiglestown Elementary School in the
16 district, where they were having a book fair. And my
17 wife and I took her and our other children to the book
18 fair to get some books.

19 And the PTO that night was also sponsoring some
20 type of parents' information thing in the gymnasium, so
21 they had -- which is their all-purpose room, they call
22 it -- a series of tables lining the parameter and
23 there's different vendors there. There's the bank, the
24 food bank, and things of this to help parents do a
25 better job with limited resources.

1 And Dr. Nilsen happened to pop his head in the
2 door when I was there. And I took the opportunity that,
3 hey, I'm going to go over and talk to him. And I walked
4 over to Dr. Nilsen and said, what's going on? I hear
5 there's going to be some big thing going on at the Board
6 meeting. He said, I don't know what you're talking
7 about.

8 I said, well, it's dealing with, once again, the
9 science curriculum. He said, oh, nothing will ever
10 happen. There will never be a vote. You don't need to
11 worry about it. I've been in the district long enough
12 to know that, you don't assume things won't happen that
13 you don't want to have happen.

14 Q. Who's Dr. Nilsen?

15 A. Dr. Nilsen is the district superintendent, Dr.
16 Richard Nilsen.

17 Q. And that conversation you had with Mr. Nilsen,
18 where was that in relation in time to the October 18th?

19 A. That was prior to the October 18th meeting. And
20 his response there -- within four or five days. His
21 response there is why I made it a point to attend the
22 October 18th meeting.

23 Q. Tell us what you recall of the October 18th
24 meeting?

25 A. The October 18th meeting, once again, there's a

1 public comment period. It was getting rather heated
2 from which I can recall. It went on very long. Public
3 comment period lasted for a very long period of time.
4 At this point in time, my wife had the baby, so he was
5 about three months old, and we didn't have a baby-sitter
6 for the baby. So the oldest child, we let watch the
7 other two, the reasonable age ones. We took the infant
8 with us and went to the meeting and were sitting there.

9 So the meeting had gone very long because of this
10 public comment period, very heated discussions over what
11 the proposed curriculum changes were and why it was
12 necessary and still about textbooks and things of that
13 nature. I remember discussions about the curriculum.
14 There was proposals. I remember Baksa standing up and
15 reading proposals.

16 I remember the comments that the teachers had
17 helped write the proposals. I can remember heated
18 discussion amongst the Board members about the
19 proposals. In particular, Alan and Bill were favoring
20 changing it to include statements of intelligent design.
21 I believe there's even one proposal, and I don't
22 remember if I saw this in text previously or if I saw it
23 that night, putting creationism in it. Then the
24 proposal just, you know, evidence against evolution --
25 or evidence contradicting evolution.

1 Noel Weinrich, who had been previously to this
2 meeting endorsing everything that Bill was proposing,
3 discussing the textbook, and how we had to find balance,
4 had changed his position and thought that it was not a
5 wise move to put intelligent design or creationism in
6 the curriculum change, and had words from Bill
7 Buckingham and Alan Bonsell about him reversing his
8 position.

9 Q. Do you recall what was said, just generally?

10 A. In general, it was basically, how can you do
11 this? How can you reverse your stance on this? This is
12 why we're doing this. You were with this all along. I
13 can't believe you would do this. What are you thinking?
14 That was the general sentiment that was expressed.

15 Q. Did you stay for the whole board meeting?

16 A. We did not. My wife and I, we were both in
17 attendance, and as I said, it went very long. They
18 called a recess. It sticks in my mind, it was around 9,
19 9:30. It may have been later than that. We had run out
20 of formula for the baby. It was way past his bedtime.
21 And we just couldn't stay any longer, so we had to
22 leave.

23 Q. During the time that you were at the board
24 meeting, did you hear the Board members discussing the
25 reasons why they were proposing a curriculum change?

1 A. Once again, I don't know if it was at that
2 meeting or it was a previous meeting, but the only
3 reason that was given at that point in time was, we
4 needed balance in the curriculum between, once again,
5 evolution and either intelligent design or creationism.

6 Q. Now as you left the meeting, did you speak to
7 anyone?

8 A. When they call the recess and I saw it was going
9 to take a while, I took advantage of the opportunity,
10 because I knew I was going to leave and not get a chance
11 to speak at the later public comment section. They had
12 been generally having two public comment sessions, one
13 at the very beginning and one at the very end.

14 And the school board, when the meeting is over,
15 if I'm facing the school board table now, they would
16 exit the cafeteria to the right-hand side and go down
17 the hallway to where the North Salem faculty room
18 happens to be, and that's typically whether they would
19 adjourn to. And I guess that's where they have their
20 executive sessions. I decided to follow them out into
21 the hall. This is my chance. I'm going to get to talk
22 to them. And I intended to. So that's had an I did.

23 Q. Which board members did you speak to?

24 A. I made a point, as I was leaving, to speak to
25 Alan Bonsell. Sheila Harkins spoke to me. And I just

1 lost my -- Angie Yingling was speaking to somebody else.
2 I sort of walked alongside her to listen to the
3 conversation and then I chimed into it.

4 Q. Tell us what you can remember about your
5 conversation or your exchange of communications with Mr.
6 Bonsell?

7 A. Mr. Bonsell was the last conversation I had. And
8 I basically confronted him and said, why are you doing
9 this? Why are you pushing this? We had that meeting,
10 you know. We explained to you why it's inappropriate.
11 You communicated to us that it's based upon your
12 religious views. And that's not an issue of science.
13 We don't address religious views in science.

14 Basically, he just kept saying to me, well, it's
15 gaps and problems, gaps and problems. I said, what gaps
16 and problems? He said, they're so big, I can drive a
17 truck through them. And he couldn't give me any real
18 examples of what that was.

19 Q. And did you also have an exchange of
20 communications with Angie Yingling?

21 A. Yes. She was having a conversation, I don't
22 recall with who. It was another female. And her
23 conversation was, I don't understand why these people
24 are so upset and why there's so much opposition to this
25 curriculum change. What's it about? And I don't see

1 how it's really religious. I said, well, excuse me, I
2 do understand why. And let me explain it to you.

3 And I enlightened her to what Discovery Institute
4 was and what intelligent design was, what it said, what
5 the history of creation science was, and the emergence
6 of intelligent design after creation science was struck
7 down by the Edwards versus Aguillarad case. Upon my
8 finishing my conversation with her, she said, oh, that
9 is a problem.

10 Q. Now following that board meeting on October the
11 18th of 2004, did you attend the next board meeting?

12 A. Beginning of November, that would have been, yes.

13 Q. It was -- it was the November 1st meeting?

14 A. Probably.

15 THE COURT: This might be -- if you have a
16 number of questions in this area, we could break at this
17 point. I'm assuming you do.

18 MR. HARVEY: I do have a few more questions.

19 THE COURT: All right. What we're going to
20 do is, counsel, take five minutes, and I'll see you in
21 chambers on a matter that Mr. Gillen raised. We'll do
22 that in about five minutes. This could be a somewhat
23 extended break. We'll take at least a 20-minute break.
24 It may ripen into 30 minutes, depending on what we do.
25 We'll break now. Our last session will be rather an

1 abbreviated one. We'll go to 4:30 approximately, give
2 or take, today. I'll see you in chambers in about five
3 minutes much. We'll be this recess.

4 (Whereupon, a recess was taken at
5 3:10 p.m. and proceedings reconvened at
6 3:20 p.m. in chambers.)

7 THE COURT: We're in chambers. We're on the
8 record. And it's been indicated to me by Mr. White that
9 the reporters, Mr. Maldonado and Mrs. Bernhard-Bubb,
10 were called for depositions, was it yesterday or --
11 today -- I'm sorry -- today at 10 a.m. and 2 p.m.

12 Mr. White advises the Court that the
13 reporters refused to answer any questions, and that they
14 invoked their, what they claim is a, First Amendment
15 reporters privilege -- do I have that correct -- not to
16 testify. He's presented me with a transcript. I have
17 no reason to doubt that that's what took place.

18 Now we have had some testimony already this
19 afternoon and some discourse about the subject articles.
20 The Court has allowed the articles to be referred to, to
21 refresh recollection. However, we have not admitted
22 them. Let me ask Plaintiffs' counsel, is it still your
23 intention to attempt to call the reporters in your
24 case-in-chief?

25 MR. ROTHSCHILD: Yes, Your Honor.

1 THE COURT: All right. Under the
2 circumstances then, you clearly have a right to depose
3 them. And my -- I don't think I have any choice at this
4 point but to summon the reporters. I'm not going to
5 hold them in contempt without giving them an opportunity
6 to come in.

7 So my intention, subject to, and I'll hear
8 you on this, any of you, would be to issue an order and
9 have them appear, but if any of you think that's
10 inappropriate under the circumstances, or you have a
11 better idea, I'll hear you on that.

12 MR. WALCZAK: Your Honor, if I could add
13 another piece to the puzzle, which is the trial
14 testimony. We have subpoenaed the reporters for 1:00
15 tomorrow. I apologize for not being here earlier this
16 afternoon for the testimony, but I was meeting with Mr.
17 Benn. I actually attended the deposition and can
18 confirm certainly what Mr. White says.

19 THE COURT: That would solve the problem of
20 having to summon them. I would assume they would appear
21 and then exercise the same privilege.

22 MR. WALCZAK: My understanding is that, they
23 will appear, but it is unclear as to whether or not they
24 will testify. And after speaking to Mr. White, it would
25 be our proposal that we all meet in chambers maybe --

1 I'm sorry, with Mr. Benn at maybe 1:15. If we break at
2 12:15, and go back at 1:45, maybe meet at 1:15 to
3 discuss where we are in terms of witnesses testimony and
4 trial. And I guess folded into that has to be the
5 situation with the depositions as well.

6 MR. WHITE: Excuse me, Your Honor. I had
7 asked both reporters whether they were going to invoke
8 the privilege tomorrow, and they said they wouldn't give
9 me an answer.

10 THE COURT: I don't know that there's
11 anything particularly magical about them invoking the
12 privilege in this court. If they, for example, would
13 appear with Mr. Benn, and Mr. Benn simply says, they're
14 here and they're not going to testify. I'm not going to
15 stand on ceremony. So to put them on the stand and
16 waste everybody's time by having them invoke the
17 privilege, I don't think that that's helpful.

18 Now the question I have to grapple with, and
19 I don't know the answer to this at this point, is
20 whether I bring them in chambers, as I think Mr. Walczak
21 suggested, and correct me if I'm wrong, and that I cite
22 them for contempt in chambers and we move on and I
23 determine what sanctions, if any, I'm going to assess
24 against them, they take their appeal, and so it is, or
25 whether I have a dialogue with them in open court.

1 I will tell you that my inclination is to
2 have a dialogue with them in open court at this point,
3 and I don't know what I'm going to do in terms of
4 sanctions at this point.

5 MR. GILLEN: If I may, Your Honor. I mean,
6 you know our position, which is simply that, you know,
7 we're entitled to every man's evidence. And for them to
8 show up tomorrow and attempt to get on the stand --

9 THE COURT: They're not going to. I'm not
10 going to have them testify as fact witnesses. I'll tell
11 you that now. They will not testify as fact witnesses
12 for the Plaintiffs unless you have the opportunity to
13 depose them. So that is not going to happen. I'll tell
14 you that right now.

15 So, you know, I don't assume that Mr. Benn
16 is playing that game. But if he is, then that's not
17 going to work. I don't know why he would under the
18 circumstances. I'm assuming privilege asserted as to
19 one is privilege asserted as to both until someone tells
20 me differently. Maybe I'm wrong. But I can't. I
21 won't.

22 Because, as I said during the last
23 conference that we had, which was off the record, and
24 I'll state it on the record, in order to get the
25 residual exception under 807, I think implicitly there

1 has to be an opportunity. And I understand that you
2 disagree on the scope of what they would be deposed on,
3 but at a minimum, you have to be given the opportunity,
4 since they're called as fact witnesses, and if you are
5 going to attempt to assert 807 to have some questioning,
6 and you haven't had that opportunity.

7 So they're not going to testify unless the
8 Defendants have had the opportunity to, the full
9 opportunity within the limits of my orders to question
10 them. I am confounded by this. I will tell you that,
11 in the abstract, I understand the argument, but I think
12 this is the wrong place to line draw by them. I think
13 it's very in fortunate. It's going to impede this
14 trial.

15 I got a reading from Mr. Benn, although it
16 was not explicit, that if I tailor this order to certain
17 concerns that he had, they would testify. I, in no way,
18 understood his motion last week, which asked for
19 alternative relief and asked for the same relief that I
20 thought I granted in the prior order, which I have to
21 tell you, was utterly confusing to me as it related to
22 your subpoena. Maybe somebody can explain that, but I
23 can't.

24 MR. WALCZAK: I think, after meeting with
25 Mr. Benn for an hour, I have a slightly different

1 understanding of what they are asking for. But I
2 certainly don't want to represent his, Mr. Benn's, views
3 to the Court. And I would rather him state that
4 tomorrow.

5 I think that our primary concern is that we
6 are able to get this to the Circuit and have them decide
7 this on an expedited basis. An expedited, I would
8 think, is a couple of weeks. Since it's a bench trial,
9 I assume, if we get a decision in two or three weeks,
10 and if even if the Plaintiffs are done with their
11 case-in-chief, assuming there's no directed verdict,
12 that we would be able to call them out of turn.

13 THE COURT: I understand that. And I have
14 that same concern, too. I also have a concern, you
15 know, for the integrity of this court and this
16 proceeding. And I, as I said last week, I was not
17 inclined to do business as according to what I
18 characterized at that time is the Marcus of Queensbury
19 rules where we have contempt by consent and life goes
20 on.

21 Now I don't know what I'm going to do. But
22 I'm, you know, deeply concerned, and not particularly
23 happy that we have this line drawn in a place where I
24 don't think it should be drawn. Reasonable people will
25 differ. I'll hear Mr. Benn out, as I have to, but I

1 don't know what else we can do. So we'll conference in
2 chambers on at least the issue of what Mr. Benn intends
3 to do.

4 We can get that on the record. I don't know
5 what I'm going to do in terms of the dialogue with the
6 reporters themselves. But your understanding then is
7 that they will be available in the building? It's not
8 necessary for me to separately order their appearance,
9 if I understand you correctly?

10 MR. WALCZAK: That is my understanding, and
11 I'd be happy to take responsibility for contacting Mr.
12 Benn for two reasons. One, to verify that's true. And
13 second, to confirm that we'll meet here at 1:15.

14 THE COURT: Well, I don't know if it will be
15 1:15. We'll take it as we can. Let's just say, after
16 lunch, because, you know, if they're a little
17 inconvenienced, they're a little inconvenienced. We all
18 have to be here, and I'm not going to disrupt anybody's
19 case.

20 It just depends on how things go. So I
21 would be reluctant to say, 1:15 sharp, but let's just
22 say, after lunch they should be available. I would say,
23 any time from 1:15 on. I'll try to take it as soon as I
24 can. Does anybody else want to weigh in on this
25 conundrum?

1 MR. WALCZAK: I think it's just because we
2 don't have enough interesting constitutional issues in
3 this case already.

4 MR. ROTHSCHILD: I wasn't going to give a
5 humorous aside. The only thing I was going to bring up,
6 which was at issue when we were admitting exhibits into
7 evidence, is that, obviously, the flip side of this, one
8 side of this, and the reason we're trying to call these
9 reporters, is to get these articles in for the truth of
10 the matter asserted.

11 We still have, obviously, our flip side
12 argument, which is that, this is what a reasonable
13 observer would know about the controversy.

14 THE COURT: Well, I understand that
15 argument, and, you know, I think we can take that up,
16 but, you know, to chew that fat, so to speak, when we've
17 not run through the mechanism that you're attempting,
18 which is to have the reporters verify the article, and I
19 understand their arguments on both sides, I would just
20 as soon not go there.

21 Now one result we could get, if they take it
22 up, is the Third Circuit could agree with Mr. Benn and
23 they could say that there is a privilege here, and
24 that's the argument you're left with. And you could
25 assert that argument at that time. But I don't know why

1 we have to do that.

2 MR. ROTHSCHILD: I guess the only thing I
3 would say, I don't look at it as the argument we're left
4 with. I think it's actually an independent evidentiary
5 purpose. It may be the more important one actually from
6 our perspective at this point in the case, that we get
7 the evidence that the reasonable observer in the
8 community would have been aware of.

9 THE COURT: I understand that, but I think,
10 as a progression, if you want to abandon your attempts
11 to bring the reporters in, and I know you don't, then
12 we'll have to focus in on that argument. I'd just as
13 soon not and rather allow you the opportunity to do
14 that.

15 I recognize that you don't think it's a
16 second best argument, but it's an ancillary argument, if
17 you will. I think, let's take the first method first,
18 so to speak, and then we'll deflect it, if we have to.
19 You'll agree that, if the Third Circuit agrees with my
20 assessment, which is that there is no reporters
21 privilege, and if, in fact, they're deposed, and if, in
22 fact, you take them, and if, in fact, I allow the
23 articles in on that basis, three if's, but if I do, you
24 won't have to assert that argument, the ancillary
25 argument.

1 MR. WALCZAK: Although, on the other hand, I
2 think it's not, from our perspective, it's not a
3 question of whether the articles come in. The question
4 is, for what purpose they come in. And our argument
5 would be that they definitely come in as historical
6 record. The question is whether they come in for the
7 truth of the matter asserted.

8 THE COURT: I understand that. But if they
9 came in for the truth of the matter asserted, which is
10 what you're attempting to do through the reporters'
11 testimony, then they're obviously going to come in for
12 effect.

13 MR. WALCZAK: Right. They're better.

14 THE COURT: That pulls them in. Right. But
15 it doesn't happen the other way around. If they come in
16 -- if I allowed them in for effect on your argument,
17 then they wouldn't come in for the truth of matter
18 asserted.

19 MR. WALCZAK: Well, they could come in for
20 both.

21 THE COURT: Well, I'm not so sure. I think
22 what you're left with, without the reporters' testimony,
23 my view, is that they could come in for a collar boy on
24 the argument that's asserted for effect.

25 But I would tell you that, I'm disinclined

1 to let them in standing alone without verification from
2 the reporters for the truth of the matter asserted. I'm
3 not inclined to do that.

4 MR. WALCZAK: Right, but I think they come
5 in for, this is what the community was reading, not that
6 what happened and this is happened.

7 THE COURT: On the effect prong.

8 MR. WALCZAK: Right. That's a non-hearsay
9 purpose.

10 THE COURT: I understand that, but not the
11 truth of the matter asserted in the article, which is
12 probative of, for example, Mr. Buckingham making certain
13 statements, if all you assert is the ancillary argument.
14 That's my point.

15 MR. WALCZAK: That's right.

16 MR. MUISE: That's assuming the effect
17 they're making is the proper one, which we obviously
18 disagree with.

19 THE COURT: I understand that, and you
20 reserve the right to argue on that point. That's why
21 we've taken the exit ramp off into that argument that I
22 didn't want to, so we'll save that, and I'll let you
23 assert whatever argument you want to on that. That's
24 precisely why I don't want to do that unless we see what
25 happens here. All right.

1 (Whereupon, the discussion held in chambers
2 concluded at 3:35 p.m. and proceedings
3 reconvened in the courtroom at 3:45 p.m.)

4 THE COURT: All right. We'll continue with
5 the direct examination of this witness.

6 **DIRECT EXAMINATION (CONTINUED)**

7 BY MR. HARVEY:

8 Q. Mr. Rehm, earlier you said that Mr. Buckingham
9 had made a comment to the effect of, 2000 years ago, a
10 man died on a cross. Can't someone take a stand for
11 him? Or words to that effect, correct?

12 A. Correct.

13 Q. You said that was said at one of the June board
14 meetings?

15 A. Yes.

16 Q. Do you remember, I can't remember if I asked you,
17 do you remember which board meeting that was said at?

18 A. I cannot place which meeting.

19 Q. Was that said in the context of a discussion
20 about the biology textbook?

21 A. Yes, it was specifically about Darwinism,
22 centered around the textbook, and how evolution didn't
23 agree with it and, therefore, had to be balanced so that
24 those that don't agree with evolution can have something
25 else that they can hold onto.

1 Q. Now let's go back to the November 1st board
2 meeting, which is where we were just when we took that
3 short break.

4 A. Okay.

5 Q. Did you attend a board meeting on November the
6 1st?

7 A. I'm pretty sure that I did.

8 Q. Why did you attend that board meeting?

9 A. It was a follow-up to the 18th board meeting. I
10 read the newspaper articles following the 18th meeting
11 and saw more of the reports of what had continued on
12 after my wife and myself had left, centering around the
13 expectations of the Board and Heather Geesey's comment
14 that they should be fired, and it was in the context, if
15 they asked for legal representation, if they're -- if
16 the suit is filed against them for somehow addressing
17 intelligent design in the classroom.

18 Q. Let's go back to the October 18th meeting for
19 just a second. Do you remember board member Heather
20 Geesey saying something to the effect about somebody
21 being fired?

22 A. I was not there at the time that it was
23 supposedly said, which is why I showed up at the
24 November meeting, having read that in the paper, having
25 requesting to hear the audio tapes.

1 Q. Did you request to hear the audio tapes?

2 A. Yes, did I.

3 Q. Did you do that before the Board meeting?

4 A. The November 1st board meeting?

5 Q. Yes.

6 A. I did it at the board meeting.

7 Q. What did you say?

8 A. I stood up and explained why I did not get to
9 hear the comments, that I was concerned by the comments
10 I was reading in the newspaper, and since the Board
11 members had been denying that they said those comments,
12 that I wanted to hear them for myself. When I had the
13 infant with me and I had to take it home because it was
14 way past its bedtime. It needed more diapers. It
15 needed bottle fed. I had to leave. That was the more
16 responsible thing to do.

17 Therefore, since I missed the opportunity to hear
18 what was being said for myself, the audio tape is there,
19 I should be able to hear it.

20 Q. And you're referring now to the audio tape of the
21 October 18th meeting?

22 A. Correct, correct, where it should have been
23 recorded what those comments actually were to determine
24 if they were said as reported or were not said.

25 Q. When you say, the comments, you're referring now

1 to the Heather Geesey comments?

2 A. All of the comments in general, but specifically
3 the Heather Geesey comments because that's what I read
4 in the paper that I wasn't able to hear on my own.

5 Q. What were you told by the Board on November 1st
6 or any member of the Board on November 1st in response
7 to your request that you should be permitted to hear
8 these tapes?

9 A. My request was framed around information I had
10 been given previously, such as that the Board would have
11 the tapes available, and generally you could either get
12 a copy of them or you could go to the administration
13 building and listen to them.

14 And I asked, why can't we get a copy, you know,
15 because we already asked that question previously and
16 had been asked through phone conversations and so forth.
17 I know I stopped in the administration building, I can't
18 tell you if it was before or after the November 1st
19 meeting, and specifically asked and actually spoke to
20 Mike Baksa about it.

21 And he told me at that point in time, he was
22 waiting for the Board to make a decision. It was then
23 related back to me at the board meeting that that was
24 not the practice and that it had been, in fact, checked
25 on, and we would not be allowed to listen to the audio

1 tapes.

2 And this was coming from Mr. Bonsell. And he
3 stated that they had consulted with the district
4 solicitor and he related to the public there that they
5 could not release the audio tapes because they were told
6 it would open up the Board members to possible
7 litigation.

8 And then he followed it up with -- I'm actually
9 not going to say that because I don't remember if he
10 said that or if that's what I'm thinking to myself as
11 he's saying it.

12 Q. Did he say anything about hiding anything?

13 A. That's the part that I'm not sure of. It sticks
14 in my mind he did say that, that we're not trying to
15 hide anything, this is what the lawyers have told us to
16 do. But at the same time -- unfortunately, I can't
17 specify he said that versus that's my thinking as he's
18 saying, we're not going to release them.

19 Q. Now --

20 A. I'm sorry. I take that back. He did say that.
21 And the reason I know is because I'm thinking to myself,
22 that's a contradiction. How can you be telling me that
23 you're not hiding anything, yet the lawyers told you you
24 can't release them or you'll be open to litigation? To
25 me, that was a direct conflict. So, yes, now thinking

1 through that, that's what I remember hearing.

2 Q. Following this, did you seek appointment to the
3 board of directors for the Dover Area School District?

4 A. Yes, I did.

5 Q. And approximately when was that?

6 A. It was in the middle of November, the 15th, 18th,
7 somewhere in that time frame. Noel Weinrich had been
8 resigning. I just lost the other -- Jane Cleaver was
9 resigning. My understanding was, Noel was moving to
10 Lancaster, Jane was moving to Florida, or something of
11 that nature. Then the Browns had resigned in protest
12 over the biology curriculum change.

13 Therefore, there were four vacancies on the
14 school board that needed to be filled. The vacancies
15 are filled by appointment by the remaining school board
16 members.

17 Q. Did you have to do something to become, to seek
18 appointment?

19 A. You had to contact the administration offices,,
20 Dr. Nilsen, I believe, was the main contact on that.
21 You had to submit a letter of intent with your
22 qualifications. I did that. And then about two days
23 before it was, you got a phone call that I was scheduled
24 to be interviewed at the public meeting that they were
25 holding to do interviews.

1 And subsequently, it was followed by a letter in
2 the mail the day or two days before the actual
3 interviews is when I received that letter telling me
4 where it was, when it was, and that I had to have a
5 prepared statement when I arrived.

6 Q. Now did other people seek appointment?

7 A. Yes, it was a full house. There was in excess of
8 10 applicants.

9 Q. So you and the other 10 applicants had to appear
10 before the Board?

11 A. Yes, we all had to be interviewed.

12 Q. What was the process of appearing before the
13 Board?

14 A. The school board was still set up in the general
15 board meeting setting where they had tables at the front
16 for the board members, and then they had the audience on
17 basically the opposite side of that. But they had it
18 pulled into more of a compact U shape, where Bill
19 Buckingham was here. I don't remember who was right
20 beside Bill Buckingham. Alan Bonsell and Sheila Harkins
21 were somewhere in the middle. Dr. Nilsen was mediating
22 it.

23 And then to the left side, I don't remember who
24 was on my immediate left, and Angie Yingling was still
25 on the left-hand side of that format. Then there a

1 smaller table set up where I was a little bit away from
2 -- where all the candidates were away from the Board
3 members when it was your turn to be interviewed. And
4 you sat there and they conducted the interview. They
5 asked one question at a time, and they alternated which
6 person would ask the questions to you.

7 Q. Did the candidates go up one at a time to be
8 asked questions?

9 A. The candidates were pre-scheduled according to a
10 particular order, and they were called one at a time to
11 be interviewed, yes.

12 Q. Were you present when the other candidates were
13 interviewed?

14 A. Yes.

15 Q. And at this point, had you spoken out against the
16 Board policy curriculum change that is the subject of
17 this lawsuit?

18 A. Yes. At some point in time, I spoke out against
19 the Board's decisions way back before the October
20 decision -- I know I was speaking in June -- I don't
21 remember which meeting -- about the idea then of
22 changing and the textbook selection, that the idea of
23 doing this because you have a problem with evolution is
24 totally ridiculous. We're talking about science.

25 We're not talking about anything else here. You

1 have to look at the scientific arguments in science
2 class. I had also spoken out -- the November 1st
3 meeting was about the tapes. I don't know if I said
4 anything else then or not. But it was common knowledge
5 at that point in time that I was opposed to the school
6 board's policy change.

7 Q. Had any of the other candidates who appeared at
8 that meeting to be interviewed by the Board for possible
9 appointment, had any of them spoken out against the
10 Board and its policy, the change to the biology
11 curriculum?

12 A. I don't recall if any had spoken out prior to the
13 meeting. I know that a number of them were asked or
14 offered an opinion when they were being interviewed.
15 One of the candidates, Eric Riddle, who eventually was
16 appointed, actually had spoken out in favor of the
17 school board and, of course, was appointed.

18 Q. Were you interviewed at that meeting?

19 A. Yes, I was.

20 Q. And were you asked any questions that other
21 members, that other candidates were not asked?

22 A. Yes, I was.

23 Q. And tell us what you were asked?

24 A. Bill Buckingham had his next turn for question,
25 and I don't remember the exact wording, but he asked me

1 if I had either ever been accused of child abuse or
2 child molestation. And I don't recall if he said abuse
3 or molestation. But that was his question.

4 Q. Now if you would just, please, take a look at
5 what has been marked as Plaintiff's Exhibit 127. And my
6 only question for you on that document is, did you
7 receive it in the mail?

8 A. Yes, I did.

9 Q. And when was that?

10 A. I'm guessing by the date on it, February. It was
11 after the curriculum change had already gone through.
12 They were, I'm guessing, February 2, that they had
13 already enacted the first reading of the statement. And
14 it really caught me off guard because they passed it on
15 the previous board meeting. Rather, it wasn't on the
16 agenda. They just brought it up and very quickly did it
17 and shuffled it out of the way.

18 Nobody got to see it. Nobody got to read it that
19 was in the audience prior to them already passing it and
20 approving it. At that point in time, the document was
21 not even complete. The copy that they had that was
22 circulating had cut off at least three lines of the last
23 paragraph above where it says, quotables, on the
24 backside.

25 Q. Mr. Rehm, I'd like to turn to my final area of

1 questions to ask you, and so I'll ask you, do you
2 believe that the board's actions have caused harm to
3 you?

4 A. Absolutely.

5 Q. And can you please tell us how the Board's
6 actions have harmed you?

7 A. There is a lot of different ways. I'll simply
8 start with professionally. When I went to Dover, I
9 thought that was going to be my teaching home. I
10 enjoyed working with the faculty. I enjoyed the
11 students I had. It was my home district. It's where I
12 lived. I was looking forward to that.

13 Within those two years I was in the district, I
14 saw a totally different side. And I saw a district in
15 which teachers were not respected for their educational
16 expertise. Their educational background was not
17 respected. Science teachers were not respected. And it
18 was all, as far as the science teachers not being
19 respected, was out of religious ideas.

20 I sat in a meeting when Alan Bonsell told me he
21 didn't agree with evolution because of his religious
22 background. He may not have been aware of it, because I
23 was teaching evolution as well, because natural
24 selection was part of the curriculum for the
25 environmental course that I had to teach.

1 So, therefore, even though he was addressing the
2 curriculum change in biology, he was addressing the
3 curriculum change in something that I also had to teach.
4 How long is it until he changes my environmental and
5 tells me what I have to do?

6 In addition to that, if his religious beliefs of
7 young earth creationism that he expressed are in
8 disagreement with evolution, what happens when we get to
9 the big bang theory and I'm teaching in physics that the
10 earth is billions of years old? And I saw my head on
11 the chopping block and my curriculum as being the next
12 to be altered when they realized what was there.

13 Personally, I live in the neighborhood, you know.
14 I live within the school district where I taught. You
15 used to be able to go out to any restaurant, sit down,
16 not worry about who was next to you. You could walk
17 down the street and say, hi, to everybody and get a nice
18 pleasant return.

19 Now people stare. They know you're a Plaintiff
20 or they know in this particular case that I'm a
21 candidate opposing the school board, and you can't sit
22 there and not worry about who's looking at you or what's
23 going to happen, you know. You'll go out and regularly
24 be called inappropriate things centering around the
25 concept of atheist.

1 They don't know me. They don't know that I'm the
2 co-director of the children's choir at church or that I
3 run the music halfway at the second service, or that,
4 you know, my wife and I run Vacation Bible School. Yet
5 they have no problem going around calling me an atheist
6 because my particular religious viewpoint doesn't agree
7 with that of the school board, which is a public entity
8 not a religious one.

9 Religiously, the young earth creationism and that
10 influencing science is not what my religious views
11 entail. There is a separation there. You know, my
12 religion accepts that science can explain things in the
13 world as we perceive them, but that science is not going
14 to touch theology.

15 It can't explain the divine creator. In
16 intelligent design, every aspect I've ever heard of it,
17 is religious creationism. You know, if the designer is
18 not -- an intelligent designer is not a God, even if you
19 don't want to refer to it as Judea Christian God, what
20 is it? Aliens? Then you're still not addressing the
21 origins of life that you speak of. Where did the aliens
22 come from?

23 So there has to be a supernatural component to.
24 And that, to me, is religious. That's not my religion,
25 and that's not something that should be shared in the

1 science classroom. Scientifically, there is no merit
2 right now to the concept of intelligent design.
3 Philosophically or religiously, is it a possibility?
4 Sure.

5 But it's out of the realm of science. And my
6 career as a science educator is educating students what
7 science is. And we also educate them what the limits of
8 science happen to be. And through the things the Board
9 has done, through their policy, through the mailing of
10 their newsletter here, they're setting up the students
11 that would be walking into my classroom to have conflict
12 right away. They have statements in here dealing
13 with -- am I allowed to read from this?

14 THE COURT: We're in the midst of a
15 narrative answer, and I think the narrative answer might
16 be getting a little extended.

17 BY MR. HARVEY:

18 Q. We just need you to tell us. The question was,
19 how does that cause you harm, and you started to
20 complain how this causes harm. If you could complete
21 your answer?

22 A. Professionally covered. Personally, you know,
23 going out, we have issues with people, where they're not
24 very pleased to see us around and are not hesitating to
25 let you know that. And it's not very polite. It goes

1 beyond atheist to adding other words onto it that I
2 don't care to repeat.

3 So there is a lot of issues and a lot of
4 different ways in which it hurts me, not to mention now
5 my daughter is in the biology course, and there are
6 students in the class that want to know, well, what if
7 you do come from monkeys? What's going on with this?
8 Well, you know that evolution doesn't make sense. Why
9 are your parents doing this?

10 So it has filtered down to the kids, and it's
11 affecting my children directly. And that's a problem.
12 And if the school board didn't pass the policy, it never
13 would have occurred. Prior to their policy change, I
14 never once had a student in class criticize another
15 student for believing evolution, even when we were
16 teaching it. It didn't happen.

17 MR. HARVEY: I have no further questions,
18 Your Honor.

19 THE COURT: All right. Thank you, Mr.
20 Harvey. Cross examination will be by Mr. Gillen. All
21 right.

22 **CROSS EXAMINATION**

23 BY MR. GILLEN:

24 Q. Good afternoon, Mr. Gillen.

25 A. Hello, Pat.

1 Q. As you indicated, Pat Gillen. I took your
2 deposition. I'm going to ask you a few questions today.

3 A. Okay.

4 Q. Mr. Rehm, you've testified that you recall
5 meeting with Alan Bonsell in the science faculty,
6 correct?

7 A. That is correct.

8 Q. And you've testified previously that you believe
9 Alan Bonsell may have mentioned intelligent design at
10 that meeting?

11 A. It is possible. I previously testified and my
12 deposition stated that I couldn't pin down which word he
13 was using by the time we reached that meeting, but there
14 had been a long dialogue prior to getting to that
15 meeting. So creationism was associated with Alan
16 Bonsell, and I couldn't tell you if it was that meeting
17 or prior to that meeting, and likewise with intelligent
18 design, if it had shown up at that meeting or prior it
19 that meeting.

20 Q. Understood. You testified previously that you
21 recalled Alan Bonsell talking to you about holes in the
22 geologic record?

23 A. Yes, that is correct. I forgot that earlier,
24 but, yes.

25 Q. And you mentioned that, at this meeting, teachers

1 expressed to Alan Bonsell that they taught micro
2 evolution, correct?

3 A. That was one of the main thrusts of the
4 conversation we had with him, that the macro evolution
5 monkey demand was not covered. And we illustrated what
6 commonly is covered, which were mostly examples of micro
7 evolution.

8 Q. And to make sure I understand you, that's changed
9 within species, is that correct?

10 A. A variation of a species, so we would still
11 recognize it typically as the same type of organism, but
12 with a slightly different property. We're looking at
13 the bacteria that was not previously resistant to an
14 antibiotic and now is resistant.

15 Q. Am I correct that sometimes that process you
16 described is referred to as subspeciation?

17 A. I'm not positive -- yeah, that's not a term that
18 I am highly familiar, but that sounds right, that's been
19 used in that context.

20 Q. And I believe you've testified that Alan Bonsell
21 expressed his belief that there were holes in
22 evolutionary theory big enough you could drive a truck
23 through, is that correct?

24 A. I did state that, yes, and he stated that to me.

25 Q. And you previously testified that you remember

1 Bert Spahr talking about the way the term theory is used
2 among scientists?

3 A. I don't know if I testified to that, but that is
4 a correct statement, that she has.

5 Q. Let me do this. Excuse me a second.

6 MR. GILLEN: May I approach the witness,
7 Your Honor?

8 THE COURT: You bet.

9 MR. GILLEN: Thank you.

10 BY SKWRAO:

11 Q. Mr. Rehm, if you would, I just ask you to, rather
12 than tax your memory unfairly, if you look at page 51,
13 line 6?

14 A. I don't mean to be confused here, but -- okay.
15 Now I see the page numbers.

16 Q. Okay.

17 A. Line 6. Okay.

18 Q. And before I ask you the question, I'd ask you to
19 look at page 50, beginning at line 17, down through page
20 51?

21 A. Did you say, page 50, line?

22 Q. Page 50, line 17, through page 51, line 11,
23 please. Have you had a chance to review that, Mr. Rehm?

24 A. Line 4. Okay.

25 Q. And on page 51, I was asking you about some of

1 the statements that Bert Spahr made to Alan Bonsell at
2 that meeting, and she testified she was explaining or
3 trying to explain that, in science theory, a certain
4 meaning?

5 A. Yes.

6 Q. And you testified that she said it's a plausible
7 explanation supported by evidence and can be modified
8 pending new evidence?

9 A. Yes. Those, I would believe, are my words there,
10 not the exact words she used, but the idea is correct.

11 Q. Good enough. And do you stand by those words
12 today?

13 A. Yeah. It could definitely use some refining. I
14 believe Dr. Miller gave a much better definition than
15 mine, but he's the expert witness.

16 Q. Precisely. I think you testified you don't
17 recall anything coming from this 2003 meeting with Mr.
18 Bonsell, is that correct, no resolution?

19 A. I don't recall any resolution coming of that
20 meeting, correct.

21 Q. You've also testified that Mr. Buckingham
22 provided some materials to the teachers for their
23 review, is that correct?

24 A. That was evidently what happened at the meeting
25 that I could not attend shortly after watching the Icons

1 of Evolution video.

2 Q. Okay. But you do recall reviewing that Icons of
3 Evolution video?

4 A. Yes. But like I said, it was brought to us by
5 Mike Baksa. I did not have any communications at that
6 point by Mr. Buckingham.

7 Q. But you understood that Mr. Buckingham had given
8 it to Mr. Baksa?

9 A. I understood at that point in time, a school
10 board member had given it to Mr. Baksa. And I did not
11 necessarily know at that point it was Mr. Buckingham. I
12 cannot say if I did or did not know at that time it was
13 Mr. Buckingham.

14 Q. Okay. As you stand here today, do you know
15 whether it was Mr. Buckingham who provided those videos
16 to Mr. Baksa to be provided to the science faculty?

17 A. It has been indicated to me that it was Mr.
18 Buckingham. But from my own recollection, as far as
19 remembering that point in time, I cannot say from my
20 memory that it was in fact him. That's just what I've
21 been informed of since then.

22 Q. Fair enough. Did you view that video, Icons of
23 Evolution?

24 A. Yes, I did.

25 Q. And I believe that you concluded that it pointed

1 to flaws in evolutionary theory, but you thought the
2 criticisms were outdated, is that correct?

3 A. The flaws, as I saw them, it was pointing to were
4 actually in methods of instruction of evolution theory.
5 And from examples that I had seen, I hadn't seen those
6 examples used in education instruction of evolution at
7 any time that I done it, not when I learned it in 7th
8 grade in the mid 80's to when I was teaching evolution
9 in 2000.

10 Q. Sure. But just to be clear, the video did
11 reflect specific criticisms of evolutionary theory as
12 taught which you disagreed with?

13 A. The video indicated that it was criticisms of
14 evolution education, and I believe it dated as far back
15 as 1950. And I thought that those were outdated
16 examples. We have much better evidence and much more
17 easily understandable evidence to use to teach our
18 children and students about evolution than what was
19 presented in that video. It's not any evidence that I
20 would ever choose to use as a hard core outstanding
21 evidence of evolution.

22 Q. Now you've also testified that Mr. Buckingham
23 indicated there was a think tank that gave the Miller
24 and Levine book an F?

25 A. Correct.

1 Q. Did you ask Mr. Buckingham for the name of that
2 think tank?

3 A. Somebody asked him. I don't recall if I was the
4 one that asked him or not, but that meeting where he
5 mentioned it, the question was asked, what is this think
6 tank? Who is it? He had no response at that point in
7 time.

8 Q. And I believe previously you testified that this
9 think tank came up around June of 2004?

10 A. That sounds familiar, because I believe it was at
11 the June board meetings where he made the announcement
12 that the book was given an F. That's when the idea of
13 it would have come up, yes.

14 Q. Now you testified previously that you believe
15 that Alan Bonsell thinks that teaching intelligent
16 design is not teaching creationism, is that correct?

17 A. Those are the words I heard him say, yes.

18 Q. Apart from the statements that you referenced by
19 Alan Bonsell about teaching intelligent design, do you
20 remember other board members discussing that topic in
21 the June through August 2004 period?

22 A. I wasn't there in any of the August times, so in
23 the June time, there was conversation about the
24 Darwinism comments made about the textbook and the
25 selection of Pendas, and people are looking for a text

1 to balance out the ideas.

2 And intelligent design, I don't recall if it was
3 specifically being used at that particular time or not.
4 While I know there was conversations occurring, that
5 were heated, I don't remember the specifics of, was
6 intelligent design the words that were used.

7 Q. Okay. You also said it's your position that the
8 Board shouldn't dictate curriculum?

9 A. My opinion on that was that they're paying
10 teachers.

11 MR. HARVEY: I'm going to object, Your
12 Honor. Mr. Gillen keeps referring to things he said.
13 And I believe he's going to -- it's unclear whether he's
14 talking about his testimony here now or his deposition
15 testimony.

16 THE COURT: Right. Do you want to clarify
17 the question?

18 MR. GILLEN: I certainly will.

19 BY MR. GILLEN:

20 Q. You've testified in your deposition to your
21 position that the Board shouldn't dictate curriculum, is
22 that correct?

23 A. If that's what's in there, I suspect so. But
24 clarification, it's not that they don't have any say in
25 curriculum, but they need to really base the curriculum

1 approval upon the experts in the area. And I don't
2 believe that nine board members that don't have degrees
3 in science are really qualified to dictate what should
4 be in the science curriculum or not.

5 They are the reviewers. They are the overseers.
6 And they're supposed to check that the, in fact, experts
7 in the area or the people they've hired that are
8 knowledgeable in the area have done their work
9 appropriately.

10 But as far as having the credentials to state
11 that they know that that is science or is not science is
12 not where I believe the Board should be. They're
13 supposed to be the process checkers, making sure that
14 things are done effectively, but not actually dictating
15 what that is. They have the final approval is what
16 their role is.

17 Q. And they have to accept what the science faculty
18 says?

19 A. If they don't accept specifically what the
20 science department states, then they should be looking
21 for an outside source, that is an expert in the area
22 that would have the science credentials to make that
23 statement. And a good place in York County is that we
24 have a lot of university and colleges that have a
25 presence with very large science staffs that were not

1 consulted or listened to.

2 Q. But you do know that Mr. Buckingham referenced
3 the think tank?

4 A. What kind of think tank? He stated, a think
5 tank. Is this a scientific think tank?

6 Q. I'm just asking you, Mr. Rehm, whether you know
7 Mr. Buckingham referenced a think tank?

8 A. He stated that he did.

9 Q. I think you've testified here today that
10 Superintendent Richard Nilsen did not believe or said
11 that he did not believe the curriculum change would come
12 up to a vote in October, is that correct?

13 A. That's what he told me.

14 Q. But you recall attending the October 18th, 2004,
15 board meeting?

16 A. Absolutely.

17 Q. And you recall Alan Bonsell speaking about
18 intelligent design?

19 A. If that's what I said in my deposition or
20 testimony, yes. Right now, unfortunately, all the
21 meetings are blending together again, as they often do.

22 Q. That's understandable. If you would, if you
23 check your deposition at page 118, line 21.

24 A. Okay.

25 Q. And if you would take a look at the deposition

1 transcript beginning with line 13 to give you a little
2 context.

3 MR. HARVEY: I'm just going to ask that the
4 witness be given the chance to read back a few pages to
5 make it clear what meeting he's talking about.

6 MR. GILLEN: By all means.

7 THE COURT: You may go forward and back so
8 that you get the statement in context before you respond
9 to any questions that Mr. Gillen may have for you.
10 After you've done that, just signify to Mr. Gillen that
11 you're ready.

12 THE WITNESS: How far back does this
13 particular go?

14 BY MR. GILLEN:

15 Q. Well, as far back as it takes for you to get
16 comfortable. I can represent to you, this is testimony
17 relating to the October 18th, 2004 meeting.

18 MR. HARVEY: I think if you begin looking at
19 page 115, you can see.

20 THE WITNESS: I saw a mention of October and
21 the decision.

22 THE COURT: Was there a question on the
23 floor? Do you have a question?

24 MR. GILLEN: I do have a question.

25 THE COURT: Did you state one, because I

1 don't recollect.

2 MR. GILLEN: Oh, you know what, Judge, I
3 think you may be right. Let me just put it this way.

4 THE COURT: Why don't you put a question on
5 the floor, and then if you need to read more to answer
6 the question, let's do it that way, because you don't
7 know how far to read because you don't know what the
8 question is.

9 BY MR. GILLEN:

10 Q. Well, I believe I asked you if you recalled Alan
11 Bonsell discussing intelligent design theory at the
12 October 18th, 2004, meeting?

13 A. According to my deposition, I do.

14 Q. Okay. And if you would, Mr. Rehm, just for the
15 record, read in your answer beginning on line 21 of page
16 118?

17 A. Following the question here, how did you
18 understand those comments --

19 COURT REPORTER: Could you slow down,
20 please?

21 THE WITNESS: Slow down? Sorry. How did
22 you understand those comments, Brian, when he was
23 talking about a balanced view? Answer, Intelligent
24 design at that point in time, that was the terminology
25 used. We still had the lingering echoes of creationism

1 from June. I don't know that I knew going in what
2 wording would be in place. Do I need to continue there?

3 BY MR. GILLEN:

4 Q. I don't think so. My point is, you've recognized
5 in your prior testimony that Alan Bonsell recognized the
6 distinction between intelligent design theory and
7 creationism, correct?

8 A. In Alan Bonsell's mind, he started communicating
9 it that way, yes. I don't know where he got that. I
10 mean, obviously, I don't perceive it that way.

11 Q. That is obvious. And I'll ask you a question
12 about that. But first let me just talk a little more
13 about the October 18th meeting. You testified in your
14 deposition that you recall Bill Buckingham losing his
15 temper and becoming impolite?

16 A. Yes.

17 Q. You recall Sheila Harkins saying members of the
18 public were out of order?

19 A. Which meeting?

20 Q. October 18th, 2004?

21 A. Possibly. She was not yet president, and I
22 remember her standing up and saying, out of order, which
23 was not her job. It was the board president's job.
24 That's left a mark in my mind.

25 Q. Okay. If you would just turn to page 128?

1 A. 120 --

2 Q. 8, line 3.

3 A. Line 3?

4 Q. Read up a little higher into 127.

5 A. Where am I to begin?

6 Q. You can begin, I think, to give you the context
7 you'll need, on about line 11?

8 A. Question, prior to line 11. I see that from your
9 answer. Who is left? Sheila Harkins, which I'm not
10 sure now where we're going with this.

11 Q. Let me ask you, as you sit here today, do you
12 remember Sheila Harkins telling members of the public
13 that they were out of order?

14 A. At the October meeting, if that's when it was,
15 yes.

16 Q. Okay. And do you remember that October 18th,
17 2004, meeting being one with a lot of controversy
18 involved?

19 A. I remember it that way, yes.

20 Q. There were exchanges between the Board and the
21 public?

22 A. As I recall, yes.

23 Q. Do you recall that, at that meeting, Alan Bonsell
24 said that the solicitor had looked at the proposed
25 curriculum change?

1 A. I remember Alan Bonsell saying that at some
2 point, and I followed up, or somebody followed up, with
3 the question, what did they exactly say? And he would
4 not tell us what their wording actually was. So, as a
5 member of the public, at a later point in time, I
6 remember saying, why isn't the solicitor here? We want
7 to hear it for ourselves because we're the ones footing
8 the bill for this.

9 That opportunity never presented itself until
10 much, much, much later. They brought the solicitor in
11 after the new year for a totally separate issue.

12 Q. But he did say, the solicitor had looked at it?

13 A. Yes, he did.

14 Q. Now I think --

15 A. Can I take that back? I don't know if he said,
16 the solicitor looked at it, as much as the solicitor
17 made a statement about it, gave the board an answer
18 about it. I don't know if that means he looked at it,
19 if he read it, if he heard it. But there was some
20 communication with the solicitor about the statements.

21 Q. Fair enough. Now you testified that during the
22 recess at this October 18th, 2004 meeting, you spoke
23 with Angie Yingling, correct?

24 A. Correct.

25 Q. And she said, more or less, I don't understand

1 what the big deal is, is that correct?

2 A. She did not understand why there was so many
3 people in the public comment section speaking out about
4 concerns about separation of church and state and why
5 intelligent design would be an issue with separation of
6 church and state.

7 Q. And she told you that, in her opinion,
8 intelligent design theory was not creationism, correct?

9 A. I don't recall if I stated that or if she stated
10 that. She was explaining at that point in time she
11 didn't understand why it was a problem.

12 Q. Okay. To help refresh your recollection, I think
13 if you look at your deposition testimony on page 132,
14 line 7?

15 A. Line 7, okay. This is similar to what I
16 testified to today.

17 Q. If you look there at line 1, and again I want you
18 to look far enough to get comfortable here. 131 should
19 give you the context you need. Look it over.

20 A. Okay.

21 Q. Okay. What I'm asking you is, you have testified
22 in your deposition that Angie Yingling told you, I don't
23 see what the big deal is, this is intelligent design,
24 this is not creationism?

25 A. Right.

1 Q. Correct?

2 A. Okay. Those were my words here summarizing the
3 idea she was communicating, but I don't know if those
4 were her exact words. Those were the ideas she was
5 communicating to the person she was speaking to whom I
6 was eavesdropping on.

7 Q. That is what you took from that exchange?

8 A. That is exactly what I took from that change.

9 Q. If you look at 132, you'll see a reference there
10 to Discovery Institute?

11 A. Correct.

12 Q. And you had a discussion with Ms. Yingling about
13 Discovery Institute?

14 A. According to what I was recalling at the time of
15 my deposition, yes.

16 Q. And, Mr. Rehm, as I understand your testimony in
17 your deposition, looking on those pages, if you'd like,
18 essentially you told Angie Yingling that you disagreed
19 with Discovery Institute's position, is that correct?

20 A. Is that what I have worded in here? If that's
21 what I have worded in here, then I'm going to stand by
22 it. I have no reason to disagree with it. I don't know
23 if I knew a hundred percent what Discovery Institute's
24 position is aside from they want to teach the
25 controversy.

1 Q. Well, do you agree that intelligent design is
2 science?

3 A. No.

4 Q. Do you have an understanding concerning whether
5 Discovery Institute takes a position on that issue?

6 A. I don't know what their exact words are, but I'm
7 guessing from the way they promote intelligent design
8 that they believe it is science. And I am guessing
9 from, what is it, the Center for Science and Culture,
10 that that would be their stance on it.

11 Q. Despite the conversation you had with Angie
12 Yingling, she did vote for the curriculum change,
13 correct?

14 A. Yes, she did.

15 Q. You've also testified in your deposition that,
16 based on discussions you had with Bert Spahr, Jen
17 Miller, and Rob Eshbach, that you believe the teachers
18 had agreed to allow Of Pandas in the classrooms as a
19 reference text as a concession to the Board, is that
20 correct?

21 A. Correct. We'll scratch -- we'll do a little bit
22 and then let's drop it.

23 Q. Now you've testified today that Noel Weinrich was
24 initially in favor of the curriculum change that was
25 discussed in the period between June and October of

1 2004, correct?

2 A. I don't assume that he was in favor of the
3 curriculum change. At the end, he versed his opinion.
4 But when the discussion was about the textbooks and
5 balance, he had originally been speaking in favor of
6 presenting balance.

7 Q. Despite that though, Noel voted against the
8 curriculum change, correct?

9 A. Correct. And his stated reason at the time was
10 he was concerned about possible litigation for the
11 district.

12 Q. I just want to make sure I understand your
13 testimony today. Your oldest daughter is in what grade?

14 A. Ninth.

15 Q. Has she taken biology?

16 A. She is taking it right now with Mr. Linker.

17 Q. Did she stay in class for the reading of the
18 statement?

19 A. It hasn't occurred yet. It will occur sometime
20 in January.

21 Q. Do you know whether she intends to?

22 A. I do not know her intentions, but that will be
23 her choice. I mean, I obviously speak to her regularly
24 about biology and science in general. But she does get
25 to make her own choices in that regard.

1 Q. And apart from the oldest daughter, what's the
2 age of your next child down?

3 A. 1998. This is 2005. No, 1997. Eight.

4 Q. That's faster than I can reckon. That's very
5 good. Let me ask you this. It's plain, you regard
6 intelligent design theory as unscientific, is that
7 correct?

8 A. That is correct.

9 Q. And you regard it as religion, is that correct?

10 A. I regard it as modern day creationism.

11 Q. And that's based on your opinion and your
12 education, correct?

13 A. My science education that it must be testable,
14 must form hypothesis, testable predictions, none of
15 which intelligent design does. And also then taking
16 that beyond that, an intelligent agent, an intelligent
17 designer.

18 Once again, as Dr. Miller said, those are the
19 words that, as a department, we tried to communicate to
20 Alan Bonsell and to the school board at the meetings.
21 We are saying that all before we even knew what Dr.
22 Miller was going to say. So those very closely reflect
23 my understanding and my views.

24 Q. You have a B.S. in science, correct?

25 A. Correct, physics.

1 Q. And you're a science educator?

2 A. Correct.

3 Q. You've also testified that in some of the classes
4 you've taught dealing with evolution, you used a
5 videotape that did discuss creationism, is that correct?

6 A. Yes, it did.

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

9 THE COURT: All right. Thank you, Mr.
10 Gillen. Mr. Harvey, do you have any brief redirect or
11 do you want to --

12 MR. HARVEY: Very brief, Your Honor.

13 THE COURT: Then we can get it in today.
14 Let's do that.

15 MR. HARVEY: Hopefully, just two questions.

16 THE COURT: All right.

17 **REDIRECT EXAMINATION**

18 BY MR. HARVEY:

19 Q. Mr. Rehm, you testified about a conversation that
20 you had with Angie Yingling on October 18th during the
21 recess on your way out of the building. Do you recall
22 that?

23 A. Correct.

24 Q. Mr. Gillen just asked you some questions about
25 that?

1 A. Correct.

2 Q. Did you say anything in that conversation about a
3 wedge strategy?

4 A. It is possible that I had, but I cannot confirm
5 that. I did become aware of the wedge strategy. I know
6 I knew the wedge strategy prior to November and
7 December, but I don't know exactly when I became aware
8 of the wedge strategy.

9 Q. And did Ms. Yingling later take, to your
10 knowledge, a public stance about her vote?

11 A. Absolutely. She requested at a later meeting to
12 have the policy rescinded. She tried to get, once
13 again, a vote and it did not receive a second. So the
14 vote never occurred. At that point in time, she offered
15 a resignation speech.

16 MR. HARVEY: No further questions.

17 THE COURT: Last round to Mr. Gillen. Did
18 you have any?

19 MR. GILLEN: No further questions, Your
20 Honor.

21 THE COURT: All right. He didn't leave you
22 much scope to maneuver in, in any event. All right. We
23 have, for this witness -- you may step down, sir. Thank
24 you. We have P-46, which again is the newspaper
25 article, and inasmuch as I previously recalled, if you

1 want to formally move it in, you can, and I --

2 MR. HARVEY: I do want to formally move it
3 in.

4 THE COURT: You're going to object, Mr.
5 Gillen, I assume, so consistent with the Court's prior
6 rulings, we will not admit it at this time without
7 prejudice to revisit that at a later point in time. Now
8 have I missed any exhibits as they relate to any of the
9 witnesses? I think we've picked them up in a timely
10 fashion. Mr. Walczak.

11 MR. WALCZAK: With Dr. Miller, we had moved
12 the admission of Plaintiff's Exhibit 434 as being Dr.
13 Behe's book, Darwin's Black Box. It was called to my
14 attention that, in fact, 434 is just excerpts of that
15 book and the actual book is at Plaintiff's Exhibit 647.
16 So we would move --

17 THE COURT: 434 is subsumed within 647?

18 MR. WALCZAK: Yes, 647 is the actual book.

19 THE COURT: So 647 would pick up the
20 excerpts. Do you want to move them in? I see no reason
21 to have both. But do you want to just pick up the book?

22 MR. WALCZAK: We can either substitute or
23 just add 647.

24 THE COURT: Let's just add it for the
25 record. We'll add 647, unless there's no objection.

1 MR. MUISE: There's no objection.

2 THE COURT: You didn't object before, so I
3 assume you will not now. We'll admit that as well and
4 the excerpts. Any other exhibits we missed?

5 MR. HARVEY: No, Your Honor.

6 THE COURT: We'll be in recess until
7 tomorrow morning. We will reconvene the trial at 9:00
8 a.m. on Wednesday morning. We'll start at that point
9 with the Plaintiffs' next witness. All right. Thank
10 you. Have a good evening.

11 (Whereupon, the proceeding adjourned for
12 the day at 4:30 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

Wendy C. Yinger, RPR
U.S. Official Court Reporter
(717) 440-1535

The foregoing certification of this transcript does not apply to any reproduction by any means unless under the direct control and/or supervision of the certifying reporter.