

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

3 TAMMY KITZMILLER, et al., : CASE NO.  
4 Plaintiffs : 4:04-CV-02688  
5 vs. :  
6 DOVER SCHOOL DISTRICT, : Harrisburg, PA  
7 Defendant : 29 September 2005  
8 .....: 9:40 a.m.

7 TRANSCRIPT OF CIVIL BENCH TRIAL PROCEEDINGS  
8 TRIAL DAY 4, MORNING SESSION  
9 BEFORE THE HONORABLE JOHN E. JONES, III  
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Plaintiffs:

13 Eric J. Rothschild, Esq.  
14 Thomas B. Schmidt, III, Esq.  
15 Stephen G. Harvey, Esq.  
16 Pepper Hamilton, L.L.P.  
17 3000 Two Logan Square  
18 18th & Arch Streets  
19 Philadelphia, PA 19103-2799  
20 (215) 380-1992

21 For the Defendant:

22 Patrick Gillen, Esq.  
23 Robert J. Muise, Esq.  
24 Richard Thompson, Esq.  
25 The Thomas More Law Center  
26 24 Franklin Lloyd Wright Drive  
27 P.O. Box 393  
28 Ann Arbor, MI 48106  
29 (734) 930-7145

30 Court Reporter:

31 Wesley J. Armstrong, RMR  
32 Official Court Reporter  
33 U.S. Courthouse  
34 228 Walnut Street  
35 Harrisburg, PA 17108  
36 (717) 542-5569

1 APPEARANCES (Continued)

2 For the American Civil Liberties Union:

3 Witold J. Walczak, Esq.  
4 American Civil Liberties Union  
5 313 Atwood Street  
6 Pittsburgh, PA 15213  
7 (412) 681-7864

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I N D E X  
Kitzmiller vs. Dover Schools  
4:04-CV-2688  
Trial Day 4, Morning session  
29 September 2005

PROCEEDINGS

Page

PLAINTIFF WITNESSES

Carol Brown:  
Direct examination by Mr. Rothschild 4

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

2 THE COURT: Be seated, please. All right,  
3 we remain in the plaintiff's case, and your next  
4 witness?

5 MR. ROTHSCHILD: Good morning. Your Honor.  
6 Plaintiffs call Carol Brown to the stand.

7 (Carol Brown was called to testify and was  
8 sworn by the courtroom deputy.)

9 COURTROOM DEPUTY: Please be seated and  
10 state your name and spell your name for the  
11 record, please.

12 THE WITNESS: My name is Carol Honor Brown.  
13 That's C-A-R-O-L, H-O-N-O-R, Brown, B-R-O-W-N.

14 DIRECT EXAMINATION BY MR. ROTHSCHILD:

1 15 Q. Good morning, Ms. Brown.

16 A. Good morning, sir.

2 17 Q. You spelled your name Carol Brown, you  
18 stated your name Carol Brown, but you also go  
19 by another name?

20 A. Yes, sir. I'm also known as Casey Brown.

3 21 Q. Thank you. I've put a binder of exhibits  
22 in front of you that we'll be referring to  
23 during your testimony. They will also be  
24 projected on the monitor before you and on  
25 the large screen over to my right.

1 A. Thank you, sir.

4 2 Q. Where do you live, Mrs. Brown?

3 A. 5401 Davidsburg Road. Dover, Pennsylvania

4 17315-4146.

5 5 Q. How long have you lived there?

6 A. Since 1983.

6 7 Q. Can you describe your educational

8 background?

9 A. I'm a college graduate, sir, with some post

10 graduate work.

7 11 Q. Where did you go to college?

12 A. I attended several college, including

13 Millersville, Trenton State College, and

14 Rutgers State University.

8 15 Q. What did you take your degree in?

16 A. Secondary education, sir.

9 17 Q. And you said you did some graduate work?

18 A. Yes, sir, I did.

10 19 Q. Can you describe that?

20 A. I did graduate work pursuant to

21 archaeology, but I didn't complete my work.

11 22 Q. Are you married?

23 A. Yes, sir, I am.

12 24 Q. And what is your husband's name?

25 A. My husband's name is Jeffrey Allen Brown,

1 that's capital J-E-F-F-R-E-Y, A-L-L-E-N.

2 B-R-O-W-N.

13 3 Q. And we can get some of the spellings later  
4 if the court reporter needs it, but that's quite  
5 all right. He'll be glad you got it right. Do  
6 you have any children?

7 A. Yes. We each have a child from a previous  
8 marriage.

14 9 Q. And did those children attend schools in  
10 the Dover area school district?

11 A. They both did, sir.

15 12 Q. Do you work?

13 A. No, sir.

16 14 Q. Have you ever worked?

15 A. Yes, sir, I have.

17 16 Q. Prior to retiring what was your last job?

17 A. I was a correspondent, a newspaper reporter  
18 for the York Dispatch, the York Sunday News.

18 19 Q. Why did you retire from that job?

20 A. I realized that I was in a position of  
21 conflict of interest when I was sworn on to the  
22 board. Friends of mine who were fellow  
23 reporters sometimes asked me questions that I  
24 could not in good conscious answer unless I  
25 broke the oath I took as a school board

1 director.

19 2 Q. When did you become a school board director  
3 or a member of the Dover school board?

4 A. 1995, sir.

20 5 Q. And how did you become a member of the  
6 school board?

7 A. I ran a write-in campaign to fill out the  
8 uncompleted two-year portion of a four-year  
9 term.

21 10 Q. And did you have further elections?

11 A. Yes, sir. I was reelected two more times.

22 12 Q. What were the complete dates of your  
13 service as a member of the Dover area school  
14 board?

15 A. December of 1995 until October 18th of  
16 2004.

23 17 Q. And why did your tenure end on October  
18 18th, 2004?

19 A. I resigned.

24 20 Q. Why did you resign?

21 A. I resigned because I was not in agreement  
22 with the direction the board had chosen to go  
23 in, and I realized that I could no longer  
24 fulfill my obligations to the members of the  
25 community and to the students.

25 1 Q. Was there any specific issue that you  
2 disagreed with the direction of the board?

3 A. It was the issue of intelligent design,  
4 sir.

26 5 Q. The change in the biology curriculum?

6 A. Yes, sir.

27 7 Q. Has your husband ever been a member of the  
8 board?

9 A. Yes, sir.

28 10 Q. And what were the dates of his tenure on  
11 the board?

12 A. I will be honest, sir. I'm not sure.

13 He was on the board for five years.

29 14 Q. And when did his tenure end?

15 A. His tenure also ended the same night as

16 mine. October 18th, 2004.

30 17 Q. During your tenure on the school board  
18 did the school board have committees?

19 A. Yes, sir.

31 20 Q. And do those committees have chairpersons?

21 A. Yes, sir, they do.

32 22 Q. How are those chairpersons selected?

23 A. The chairpersons are selected by the  
24 sitting president of the school board, sir.

33 25 Q. Do the committees of the Dover school



1 board, and you know, we can confine this to  
2 the time you were on the school board, did  
3 that include a curriculum committee?

4 A. Yes, sir.

34 5 Q. I've heard in this litigation actually  
6 multiple curriculum committees. Can you  
7 distinguish between the various kinds of  
8 curriculum committees that were in operation  
9 in the Dover area school district?

10 A. Yes, sir, there are three basic kinds  
11 of committees in general and the curriculum  
12 committees in particular. The first is a  
13 citizens advisory committee for the curriculum.  
14 That is comprised of interested members of the  
15 community who wish to volunteer their time,  
16 usually under the aegis of an administrator of  
17 district, very often the assistant  
18 superintendent, sometimes the superintendent,  
19 sometimes the building principal.

20 Then there is the district curriculum  
21 committee which is comprised of teachers and  
22 department heads. Also under the assistant  
23 superintendent, curriculum is part of his job,  
24 and then there is the board curriculum  
25 committee. It is comprised of a committee

1 chairperson, and no more than three members  
2 of the board. The president, the current  
3 president of the board is ex officio member  
4 of all four committees.

35 5 Q. Have you ever served on the board  
6 curriculum committee?

7 A. Yes, sir, I have.

36 8 Q. Were you serving on the board curriculum  
9 committee at the time of your resignation?

10 A. Yes, I was, sir.

37 11 Q. And were you serving on it throughout the  
12 2004 year? And I mean calendar year, not school  
13 year.

14 A. Until the point of my resignation, sir.

38 15 Q. Can you describe how each of these three  
16 committees figure into the development of  
17 curriculum in the Dover area school district?

18 A. Curriculum is put together by a combination  
19 of people. It usually begins with the district  
20 committee comprised of the teachers and any  
21 involved administrators. The curriculum may be  
22 revised because of changes mandated by the state  
23 or changes in the subject matter itself. Also  
24 going along with that would be changes in  
25 textbooks, the need for new textbooks or

1 additional textbooks.

2 The district committee would get input from  
3 the citizens advisory committee. They're very  
4 much a part of this, and the recommendations  
5 would then come back to the board and the board  
6 would meet both in conjunction with the teachers  
7 of the district committee as well as by itself,  
8 and then the members, the chairperson of the  
9 curriculum committee would bring any needed  
10 changes or textbooks to the full board for a  
11 vote during a regularly scheduled board meeting.

39 12 Q. In the case of this curriculum advisory  
13 committee, this citizens committee, would they  
14 have meetings to discuss proposed curriculum  
15 changes?

16 A. Yes, generally they do, sir, in the fall  
17 of the year.

40 18 Q. And would they communicate their views on  
19 proposed curriculum changes to the other  
20 committees?

21 A. Yes, sir, they do.

41 22 Q. At the time of your resignation who besides  
23 yourself was on the board curriculum committee?

24 A. The chairperson was Mr. William Buckingham,  
25 Mrs. Sheila Harkins, who was then board vice

1 president, and myself, with Mr. Alan Bonsell,  
2 the president of the board as ex officio member.

42 3 Q. And based on what you said in your earlier  
4 testimony Mr. Bonsell appointed Mr. Buckingham  
5 to chair that curriculum committee?

6 A. Yes. That is one of the duties of the  
7 president.

43 8 Q. Who were the other members of the board?  
9 I think you've mentioned yourself and your  
10 husband, Mr. Bonsell, Mr. Harkins,  
11 Mr. Buckingham. Who else was on the full  
12 school board as of the time of your resignation?

13 A. Mrs. Jane Cleaver, Ms. Angie Yeungling,  
14 Mrs. Heather Gessey, and Mr. Noel Renwick.

44 15 Q. Do you consider any of these people your  
16 friends?

17 A. I did, sir.

45 18 Q. All of them?

19 A. Yes, sir.

46 20 Q. Did you ever run with the other, any of  
21 these other members of the board on a slate  
22 of candidates?

23 A. Yes, sir, I did.

47 24 Q. Who did you run with?

25 A. I ran with Mr. Alan Bonsell, Mrs. Sheila

1 Harkins, and Mrs. Angie Yeungling. Mrs. Harkins  
2 and I were running for re-election at that  
3 point.

48 4 Q. Did your husband Jeff Brown run with a  
5 slate of candidates? Actually let me just  
6 withdraw that for a moment. What year was  
7 that that you ran with this slate?

8 A. Around 2001, sir.

49 9 Q. Did your husband Jeff Brown ever run on  
10 the slate of, with a slate of candidates?

11 A. Yes, sir. It was more informal however.

50 12 Q. Who did he run with?

13 A. I'm sorry, sir, I blinked.

51 14 Q. I'm sorry.

15 A. He ran with Mr. William Buckingham,  
16 Mrs. Jane Cleaver, and they endorsed  
17 Mrs. Heather Gessey, who was running as  
18 an independent candidate.

52 19 Q. During your tenure on the school board  
20 did the administration have retreats?

21 A. Yes, we did, sir.

53 22 Q. Did the board have a retreat in January  
23 of 2002?

24 A. Yes, we did, sir.

54 25 Q. Where was it held?

1 A. In the teachers lounge of the North Salem  
2 Elementary School.

55 3 Q. At what time of day?

4 A. It would have been early evening, somewhere  
5 around 6:30 to 7:00.

56 6 Q. Who attended that meeting in January of  
7 2002? And if you can name them best by position  
8 or type of position, that's fine.

9 A. All of the administrators, that would be  
10 the senior administrators, including the interim  
11 superintendent, the building principals, and all  
12 of the assistant principals. I believe we then  
13 had two, the language arts supervisor, the  
14 technology coordinator, the supervisor of  
15 buildings and grounds, the supervisor of food  
16 services, the supervisor of transportation, and  
17 the supervisor of language arts. I think I have  
18 them all.

57 19 Q. Did the board members also attend?

20 A. And the board members, sorry.

58 21 Q. Who was the superintendent in January of  
22 2002 for the Dover area school district?

23 A. Dr. Richard Nilsen was then our interim  
24 superintendent, sir.

59 25 Q. And who was the assistant superintendent

1 at that time?

2 A. We did not have an assistant superintendent  
3 at that time.

60 4 Q. At this retreat in January of 2002 did the  
5 members of the board get an opportunity to the  
6 identify issues that were important to them?

7 A. Yes.

61 8 Q. Can you describe how that happened, where  
9 the seating was, and how each board member had  
10 received that opportunity?

11 A. We began by helping ourself to a buffet.  
12 Carol Stambaugh, our food services supervisor  
13 at that time, and her workers put out a buffet  
14 for us. So everyone helped themselves and found  
15 places around a large group of tables, grouped  
16 together in a large rectangular form, and  
17 Dr. Nilsen tried to seat us so that a board  
18 member was seated between an administrator, that  
19 was kind of every other one, and as we ate we  
20 had opening remarks. I had the honor to be the  
21 president of the board at that time, and I made  
22 a few remarks and Dr. Nilsen did as well. The  
23 gist of the remarks really was desire to air out  
24 some of our differences and also some of the  
25 issues in which our newer board members were

1 interested in taking on, both praise and blame  
2 from different members.

62 3 Q. Can you explain how the board members  
4 communicated the issues that were important  
5 individually to them?

6 A. We took turns. Initially we had reports  
7 from each of the administrators, concerns they  
8 might have, achievements that they were very  
9 proud of that had been attained over the  
10 previous part of the school year or the previous  
11 school year, and then our board members took  
12 turns.

63 13 Q. In preparing for your testimony today did  
14 you look at any documents to refresh your  
15 recollection about what you and other board  
16 members said at that January 2002 retreat?

17 A. Yes, sir, I did.

64 18 Q. And what was that?

19 A. You presented me with copies of the minutes  
20 from two different re,treats sir.

65 21 Q. And when you're describing these minutes,  
22 do you remember, do you have an understanding  
23 of who prepared them?

24 A. Dr. Nilsen had taken notes, and then he  
25 presented copies of the minutes to us at a



1 subsequent board meeting.

66 2 Q. Could I ask you, Matt, to pull up Exhibit  
3 21? Plaintiff's Exhibit 21? And that's also on  
4 your monitor in front of you. Is this the  
5 document that you're referring to?

6 A. Yes, sir, it is.

67 7 Q. Was Alan Bonsell a member of the board at  
8 the January 2002 meeting?

9 A. Yes, sir. He had been sworn in in  
10 December.

68 11 Q. And was this his first tenure on the board?

12 A. Yes, sir, it was.

69 13 Q. So he had been on the board for about  
14 three weeks at the time?

15 A. Yes. So had Mrs. Angie Yeungling.

70 16 Q. Do you remember what issues Mr. Bonsell  
17 identified at the January 2002 meeting?

18 A. He and I shared some issues. One of them  
19 was policy. We had discussed uniforms. He also  
20 was very concerned with the state of morality,  
21 and he expressed a desire to look into bringing  
22 prayer and faith back into the schools.

71 23 Q. Do you remember him identifying any other  
24 issue?

25 A. He mentioned Bible, sir, and he mentioned

1 creation, creationism.

72 2 Q. What did he say about creationism?

3 A. That he felt it should be a fair part of  
4 the, there should be a fair and balanced  
5 presentation within the curriculum.

73 6 Q. Did he say what aspect of the curriculum he  
7 wanted creationism included in?

8 A. I don't recall that he did, sir.

74 9 Q. Was there a board retreat in the subsequent  
10 year in 2003?

11 A. Yes, sir, there was.

75 12 Q. And when was that held?

13 A. That was in March of 2003.

76 14 Q. And where was it held?

15 A. That was also held in the teachers lounge  
16 at North Salem Elementary School. That was our  
17 normal meeting place.

77 18 Q. And was it at the same time of day and  
19 evening?

20 A. Yes, sir.

78 21 Q. Did the same type of people attend the  
22 meeting, board members?

23 A. Yes, sir.

79 24 Q. Administrators?

25 A. Yes, sir.

80 1 Q. Was Dr. Nilsen the superintendent at this  
2 time?

3 A. Yes, he was, sir.

81 4 Q. And now the full superintendent, not an  
5 interim superintendent?

6 A. Yes.

82 7 Q. Was there an assistant superintendent by  
8 the time of this meeting?

9 A. Yes, sir, Mr. Michael Baksa.

83 10 Q. Did he attend the meeting?

11 A. I believe he did, sir.

84 12 Q. Did Dr. Nilsen attend the meeting?

13 A. Yes, sir.

85 14 Q. Did the board members also again attend  
15 the meeting?

16 A. Two of the board members were absent, sir.

86 17 Q. Who was that?

18 A. I believe Mr. Buckingham and Mrs. Yeungling  
19 were absent, sir.

87 20 Q. Did the board members identify important  
21 issues in the same manner that they had in  
22 January of 2002?

23 A. Yes, they did, sir.

88 24 Q. And did Dr. Nilsen again take notes of what  
25 the board members said?

1 A. Yes, sir, he did.

89 2 Q. Did he subsequently circulate a typed up  
3 version of those notes?

4 A. Yes, he did, sir.

90 5 Q. I'd like you to look at Exhibit 25, which  
6 will again appear on your monitor. Do you  
7 recognize this as the typed version of  
8 Dr. Nilsen's notes?

9 A. Yes, sir, I do.

91 10 Q. Did you also look at this in preparation  
11 for your testimony today?

12 A. Yes, I did.

92 13 Q. But you had seen it shortly after the  
14 retreat as well?

15 A. Yes, I had.

93 16 Q. At this time Mr. Bonsell was still on the  
17 board?

18 A. Yes, sir, he was. He was then vice  
19 president of the board.

94 20 Q. Did he have any role on the curriculum  
21 committee?

22 A. He was chairperson of the curriculum  
23 committee.

95 24 Q. Do you remember what issues Mr. Bonsell  
25 identified at this meeting?

1       A. Some of the same issues, but in addition we  
2       were also upgrading our technology and working  
3       on the web site for the school district, and he  
4       had some concerns about keeping the site current  
5       because we were going through growing pains at  
6       that point, sir. One of the issues was  
7       coordinating -- I'm sorry, one of his issues  
8       which had been mentioned in the previous year  
9       but which he was stronger on the second time  
10      around was the importance of teaching our  
11      students about the Founding Fathers, about early  
12      American history, and the role of faith in the  
13      founding of America.

96 14      Q. Prior to this time was the Dover High  
15      School teaching students, or all Dover schools  
16      teaching the students about Founding Fathers and  
17      our early colonial period?

18      A. Yes, but not to, there was not the emphasis  
19      that I believe Mr. Bonsell wanted to see.

97 20      Q. And what specifically was that emphasis?

21      A. His emphasis was more on making our  
22      students aware of the importance of faith in  
23      the early history and founding of our country,  
24      sir.

98 25      Q. Did Mr. Bonsell say anything about

1 creationism at this meeting?

2 A. I believe there was a brief mention, sir.

99 3 Q. And what do you remember him saying?

4 A. He reiterated some of the same concerns he  
5 had the previous year, but his emphasis was more  
6 on faith in our Founding Fathers, sir.

100 7 Q. Did he say anything at this March meeting  
8 about how he wanted creationism taught in  
9 relation to evolution?

10 A. I believe he mentioned the sciences this  
11 year, sir. For that year, I'm sorry.

101 12 Q. Did there come a time when the school  
13 science department requested that the board  
14 approve the purchase of new science textbooks?

15 A. Yes, sir.

102 16 Q. And what textbooks were they recommending  
17 the school district purchase?

18 A. We were looking at changes in our  
19 chemistry, physics, and biology textbooks  
20 on the high school level, sir.

103 21 Q. When did this happen?

22 A. The first time had occurred in the  
23 2002/2003 school year, sir.

104 24 Q. In the case of biology what book did they  
25 request?

1 A. The Miller-Levine biology published by  
2 Prentice Hall.

105 3 Q. What happened with that request during the  
4 20032/2003 school year?

5 A. We had an extremely tight budget, not that  
6 we always didn't, but it was very much so that  
7 year. And even though it was the cycle time for  
8 science books, we put off purchase for one year.

106 9 Q. Did the teachers renew their request for  
10 science books in the 2003/2004 school year?

11 A. They most certainly did, sir.

107 12 Q. In the case of biology did they request  
13 the same book?

14 A. Yes, sir.

108 15 Q. At the time that this request was renewed  
16 who was the chair of the board curriculum  
17 committee?

18 A. Mr. William Buckingham, sir.

109 19 Q. And Mr. Bonsell was the president?

20 A. Mr. Bonsell was the president.

110 21 Q. Who were the other members of the  
22 curriculum committee at this time?

23 A. As I stated earlier Mrs. Sheila Harkins,  
24 who was then board vice president, Mr. William  
25 Buckingham, myself, and Mr. Bonsell, Bonsell

1 as president of the board.

111 2 Q. And you certainly did say that, thank you.

3 A. Okay.

112 4 Q. Were there meetings of the full board of  
5 directors for the Dover area school district in  
6 June 2004?

7 A. Yes, sir.

113 8 Q. How many?

9 A. Two, sir.

114 10 Q. Did the board have a practice at this time  
11 in the 2004 time period of having two board  
12 meetings each month?

13 A. Yes, normally the first and second Mondays  
14 of the month, sir.

115 15 Q. Were there different functions for each of  
16 those meetings?

17 A. The first meeting of the month was what we  
18 called a planning meeting wherein we have the  
19 same agenda that we would have for the action  
20 meeting, but we took the time and discussed the  
21 items that needed discussion, questions might be  
22 raised that would then be answered prior to the  
23 vote at the action meeting. Also items wherein  
24 we were in agreement, became part of the consent  
25 agenda, which required only one vote rather than



1 multiple votes.

116 2 Q. So it's fair to say when there was a new  
3 item that was going to be voted on in a given  
4 month, you talked about it a lot in the first  
5 meeting and you voted on it in the second  
6 meeting?

7 A. Yes, sir. The only exceptions to that  
8 would be retroactive hiring or student  
9 discipline hearings, because you're under  
10 time constraints.

117 11 Q. In these meetings in June was there  
12 discussion of a biology textbook?

13 A. Yes, sir.

118 14 Q. Was there discussion in one of the meetings  
15 or both?

16 A. Both of the meetings sir.

119 17 Q. Let's start with the first meeting. That  
18 would have been the planning meeting?

19 A. Yes, sir.

120 20 Q. Can you tell us what you remember about  
21 discussion about the biology textbook in the  
22 first June meeting, the planning meeting?

23 A. I believe Mrs. Callahan, Mrs. Aralene  
24 Callahan, who's also known as Barrie Callahan,  
25 brought the subject up during the public

1 comments section first and questioned whether  
2 or not we were going to be voting on the biology  
3 textbook.

121 4 Q. What happened in response to, if anything  
5 in response to --

6 A. Mr. Buckingham indicated he was not  
7 prepared for that.

122 8 Q. Did he say anything about the biology  
9 textbook?

10 A. He viewed the biology textbook as in his  
11 words laced with Darwinism, sir.

123 12 Q. Did you understand what he meant by that  
13 comment?

14 A. To the best of my understanding I believed  
15 that he meant he felt there were too many  
16 mentions of Charles Darwin in the textbook.  
17 There was not a balance of material.

124 18 Q. Did he say anything else on the subject of  
19 biology textbook or biology?

20 A. Yes, sir.

125 21 Q. What else did he say?

22 A. There were a number of things that were  
23 said, sir. There were questions and comments,  
24 and Mr. Buckingham stated that, "Two thousand  
25 years ago someone died on the cross for us.

1 It is time for us to stand up for him," and he  
2 said it in the context of wanting to include  
3 creationism side by side with Darwin's theory  
4 of evolution, with a small "E," sir.

126 5 Q. Do you remember him saying anything else?

6 A. That's the most vivid recollection I have,  
7 sir.

127 8 Q. Do you read any newspapers as a regular  
9 matter?

10 A. Yes, sir, I do.

128 11 Q. What newspapers do you read?

12 A. The York Dispatch and the York Daily Record  
13 and --

129 14 Q. What, I'm sorry?

15 A. And the New York Times.

130 16 Q. Was it your practice to read those  
17 newspapers during the June 2004 time period?

18 A. Yes, it was, sir.

131 19 Q. Do you remember reading articles about what  
20 was going on in the school board meetings,  
21 particularly on the subject of biology  
22 textbooks?

23 A. Yes, sir, I do.

132 24 Q. Would reading those articles refresh your  
25 recollection about whether Mr. Buckingham said

1 anything else at the June meetings on this  
2 topic?

3 A. Yes, sir.

133 4 Q. I'm going to ask you to look in your binder  
5 at Exhibits 45 and 46. There are two --

6 MR. GILLEN: Your Honor, may I have  
7 permission to voir dire the witness?

8 THE COURT: On what point, Mr. Gillen?

9 MR. GILLEN: On the point of whether she's  
10 seen the article prior to her testimony here in  
11 court today, and if so when.

12 THE COURT: If that's an objection that  
13 she hasn't seen them, you can interpose the  
14 objection. I think that would be the more  
15 appropriate way to do it.

16 MR. GILLEN: Can we have a side bar, judge?

17 THE COURT: You may.

18 (Side bar at 10:07 a.m.)

19 MR. GILLEN: This just occurred to me, and  
20 I don't want to surprise these guys, so I  
21 apologize for that because just occurred to me.  
22 Did she look at them yesterday? And if I asked  
23 her, the judge allows me to voir dire did she  
24 look at them yesterday?

25 MR. ROTHSCHILD: I'll ask her. I mean --

1           MR. GILLEN: Because this is my, this is the  
2           only concern I have. We all know that there's  
3           an exceedingly fine line between refreshed  
4           recollection and recitation. If she looked  
5           at them yesterday and they refreshed her  
6           recollection, but she can't remember today,  
7           I think that that would be crossing the line.

8           THE COURT: You lost me, but I'm admittedly  
9           dense on occasion.

10          MR. GILLEN: Well, what I'm saying is this.  
11          I fully acknowledge you can look through  
12          documents to refresh your recollection in  
13          genuine refreshed recollection --

14          THE COURT: So you're positing that she may  
15          have looked at the article yesterday, and that  
16          entails what ?

17          MR. GILLEN: No, I'm not, I'm not saying  
18          that. What I'm saying, judge, is if it  
19          refreshed her recollection yesterday --

20          THE COURT: She shouldn't be able to look  
21          at it today?

22          MR. GILLEN: Right, because what is she  
23          doing today? If she can't remember it for 24  
24          hours, you got to wonder whether it's  
25          recollection or recitation.

1           THE COURT: Well, you know, here's what  
2 we'll do, because --

3           MR. ROTHSCHILD: May I respond, Your Honor?  
4 I mean, it's very common for a witness to just  
5 under the pressure of testimony to forget  
6 something that is very familiar to her, and I  
7 mean it's, you know, he can certainly ask her  
8 the question whether she looked at this article  
9 yesterday and whatever evidentiary effect that  
10 has, but I could have shown her it just today.

11          THE COURT: Well, I think this. I think the  
12 defense has raised is a valid concern that when  
13 you use these articles that there's a strong  
14 temptation on the part of a witness to, and I  
15 think that's human nature, to look down and to  
16 read from something that they just refreshed  
17 their recollection. So let's do this in an  
18 effort to be fair. Why don't you ask her to  
19 review the article, take the article from her  
20 when you do the questioning. Then she's  
21 suitably refreshed her recollection, that she  
22 can't use it, and that will take care of the  
23 objection in a Solomon-like way. I know of no  
24 better way to do it, because I don't know that  
25 the distinction that she looked at it yesterday

1 as opposed to today, it might make logical  
2 sense, I'm not sure that there's any thought as  
3 to that, but --

4 MR. GILLEN: And truly it just occurred to  
5 me and it just seems -- and that's all I'm  
6 trying to do, make sure it's genuine refreshed  
7 recollection. I know that you're a judge and  
8 you'll be mindful of that. I just want to, I  
9 think the things you've sketched out is fair.

10 THE COURT: Why don't we just have  
11 henceforth and, you know, as a rule when  
12 you're going to use articles to refresh  
13 recollection, why don't you have them read it,  
14 give them all the time they need, tell them that  
15 they have all the time that they need to read  
16 it, then snatch it from their hands.

17 MR. ROTHSCHILD: Can I have them close the  
18 notebook? Would that be sufficient?

19 THE COURT: Or close the notebook, you know,  
20 whatever you do, because there is a natural  
21 temptation to look down. I think we all have  
22 that when it's right in front of us, and I think  
23 that will take care of Mr. Gillen's concern.

24 MR. GILLEN: Thank you, Your Honor.

25 (Side bar concluded at 10:14 a.m.)

1 THE COURT: You may proceed, Mr. Rothschild.

2 BY MR. ROTHSCHILD:

134 3 Q. Mrs. Brown, have you had a chance to look  
4 through Exhibits 45, which is an article by  
5 Heidi Barnhart-Bubb in the York Dispatch dated  
6 June 9, 2004, and an article that we've marked  
7 as P-46 by Joseph Maldonado in the York Daily  
8 Record, also dated June 9th, 2004?

9 A. May I have a moment?

135 10 Q. Yes. Certainly.

11 (Brief pause.).

12 A. I'm sorry, sir, what was the second one?

136 13 Q. Exhibit, I think I said first P-45 and  
14 the second one would be P-46.

15 A. P-46? Thank you.

16 (Brief pause.)

17 A. I'm sorry, sir, I can't read the second  
18 one. I'm familiar with the gist of it, but I  
19 can't read it.

137 20 Q. Just too hard to read?

21 A. Yes, sir. The printing is too small.

138 22 Q. I apologize for that.

23 A. That's fine.

139 24 Q. Could you now close your notebook? Thank  
25 you. Has that reading the article you could



1 read, P-45, I got one of them right, refreshed  
2 your recollection about anything else that  
3 Mr. Buckingham said at the first meeting in  
4 June?

5 A. He repeated his statement he had made in  
6 late fall of 2003 regarding his disbelief in the  
7 separation of church and state. He referred to  
8 the separation of church and state as being a  
9 myth, and he stressed the importance of teaching  
10 creationism because he felt we were doing our  
11 students a disservice. Our board president  
12 agreed with him that there were only two  
13 theories of the origins of life, and it should  
14 be taught side by side, evolution and  
15 creationism.

140 16 Q. And when you're referring to the board  
17 president now, you're not referring to  
18 Mr. Buckingham but Mr. Bonsell?

19 A. My apologies. President Alan Bonsell.

141 20 Q. Do you remember board member Noel Renwick  
21 saying anything at this discussion?

22 A. Mr. Renwick agreed with the concept of  
23 teaching creationism in school.

142 24 Q. Did the topic of the biology textbook and  
25 the general subject matter of evolution or

1 biology curriculum come up again at next board  
2 meeting in June?

3 A. Yes, it did, sir.

143 4 Q. And that would be typically the action  
5 meeting?

6 A. Yes, sir.

144 7 Q. What do you remember, again focusing on  
8 this subject, about what was, what was said at  
9 this board meeting?

10 A. Mr. Buckingham continued his objection.  
11 There were comments from the audience, including  
12 what I can only describe as a Chautauqua by  
13 Mr. Buckingham's wife, Mrs. Charlotte  
14 Buckingham. Our normal public comment is  
15 limited to five minutes per person, and  
16 Mr. Bonsell as board president chose to allow  
17 her to continue on for between ten and fifteen  
18 minutes, sir.

145 19 Q. Educate me, what's a Chautauqua?

20 A. Sorry, sir. A Chautauqua to me as I grew  
21 up is an old time Christian tent revival. Very  
22 often they were held at the York Fairgrounds.  
23 I mean no disrespect, but the quote was come to  
24 Jesus meetings.

146 25 Q. That's not an expression that

1 Ms. Buckingham used at the meeting? It's  
2 just how you're describing these tent revivals?

3 A. Actually she described how to accept  
4 Christ as your personal savior. She read  
5 portions of scripture and lectured us on our  
6 responsibilities to teach our children the  
7 truth.

147 8 Q. Did she talk about the subject of evolution  
9 or creationism in this talk?

10 A. She spoke very vehemently in favor of  
11 creationism and against evolution, and she  
12 exhorted us as a board to do whatever it took,  
13 even to the point of taking it to the Supreme  
14 Court, which her husband had also stated.

148 15 Q. How did the board members besides yourself  
16 react to Charlotte Buckingham's statement?

17 A. There were muttered amens, sir.

149 18 Q. Do you know who said them?

19 A. I can't tell you every one who said them,  
20 but I heard them on either side of me.

150 21 Q. Who was sitting on either side of you?

22 A. To my left was Ms. Heather Gessey, to my  
23 right was Mr. William Buckingham.

151 24 Q. Did you understand Mrs. Buckingham to be  
25 speaking in support of her husband's position

1 on this issue?

2 A. Very definitely, sir.

152 3 Q. Why did you come to that conclusion?

4 A. She made it abundantly clear in her  
5 language, sir.

153 6 Q. Do you remember anything said by board  
7 members at this second meeting in June relating  
8 to the subject of the biology book, evolution,  
9 creationism.

10 A. There was disagreement between my husband  
11 and Mr. Buckingham. We were concerned about the  
12 legality. When I say we, my husband and I had  
13 discussed this at home. We were concerned that  
14 we could get into trouble if we brought in the  
15 idea of creationism and did not give equal time  
16 if you will, sir, to all faiths, to all beliefs  
17 in the origins of life. It was one of the first  
18 times that I proposed offering an elective  
19 course called comparative world religions on the  
20 high school level so that our students could be  
21 introduced to the major world faiths and the way  
22 in which they're the same and the way in which  
23 they differ, in particular the fact that every  
24 major world religion has at its core what we  
25 Christians call the golden rule. Do unto others

1 as you would have them do unto you. The words  
2 may vary, but the intent is the same.

154 3 Q. You described I guess sort of verbal  
4 jousting between your husband and  
5 Mr. Buckingham. What did Mr. Buckingham  
6 say in that interaction?

7 A. Mr. Buckingham in essence accused my  
8 husband of cowardice because my husband  
9 expressed concern that he didn't think we should  
10 be doing this. Verbatim he told my husband that  
11 he was glad he had not been fighting during the  
12 American Revolution because we would still have  
13 a queen on the throne ruling our country.

155 14 Q. Do you remember anything else  
15 Mr. Buckingham said at this meeting on  
16 the subjects that we're talking about, the  
17 textbook, evolution, education?

18 A. He was not concerned about us getting into  
19 any legal trouble, and he felt that in taking  
20 the position he did in desiring to go beyond our  
21 normal duties, to go into areas that had  
22 previously been ruled upon by the Supreme Court,  
23 that he was not violating his oath of office.

156 24 Q. Do you remember anything else he said?

25 A. Not one specific thing, sir. I know that

1 when I quoted from the Treaty of Tripoli of  
2 1787, I believe it's Section 13, to wit where  
3 president John Adams makes the point that we do  
4 not have a state religion, Mr. Buckingham was  
5 not favorable in his response, sir.

157 6 Q. And is that everything that you remember?

7 A. To the best of my recollection, sir.

158 8 Q. Were you reading the York papers during  
9 this time period after the second meeting?

10 A. I did at that time.

159 11 Q. Do you believe that reading those articles  
12 would refresh your recollection about what  
13 occurred at this second board meeting in June?

14 A. Probably, sir. I'm sure I've missed  
15 things.

160 16 Q. Could you turn to, and I hope these are  
17 more readable than the ones I previously handed  
18 to you, I think they are, Exhibits 53 and 54 in  
19 your notebook? And again I would ask that you  
20 read them, and then close the notebook and I'll  
21 ask you some more questions.

22 (Brief pause.)

161 23 Q. Ms. Brown, are you able to read those?

24 A. To some extent. Sorry.

25 (Brief pause.)

162 1 Q. Ms. Brown, a suggestion was made actually  
2 by everybody in the room that we can put this  
3 on the monitor and that Matt can actually make  
4 it more readable, and so let's try that and let  
5 me --

6 A. I'm sorry.

163 7 Q. You just tell him when you're done reading  
8 that and you can go to the next page.

9 A. Thank you.

10 THE COURT: Take your time.

11 THE WITNESS: I'm sorry, I have a vision  
12 impairment.

13 THE COURT: I understand that, and this is  
14 not a test. You just take all the time you need  
15 to read it.

16 THE WITNESS: I don't know how to turn it,  
17 sir.

18 (Brief pause.)

19 THE WITNESS: Thank you, sir.

20 BY MR. ROTHSCHILD:

164 21 Q. Just let me know when you're done reading  
22 this article and we'll go on to the next one.

23 A. I'm finished, sir.

165 24 Q. Did you get all the way to the bottom  
25 there? In could you pull up P-54 and do the

1 same for Ms. Brown, and I'll try to remember  
2 that for future documents.

3 A. Thank you, sir.

166 4 Q. Having read the two articles, and just for  
5 the record that's P-53, which is a July 15th  
6 article by Joseph Maldonado in the York Daily  
7 Record, and P-54, which is a June 15th, 2004  
8 article in the York Dispatch written by Heidi  
9 Barnhart-Bubb, do those refresh your  
10 recollection about anything else that  
11 Mr. Buckingham said at this second meeting  
12 in June?

13 A. Yes, there were a combination of things,  
14 and my apologies for mixing up the comments when  
15 they were made. The comments reported in the  
16 newspaper articles were accurate in all  
17 respects, sir.

167 18 Q. Are you describing something you mixed up?

19 A. The comments concerning two thousand years  
20 ago, and at the first meeting I had forgotten  
21 the fact that there was a representative from  
22 the Americans United for the Separation of  
23 Church and State present, and he took exception  
24 to Mr. Buckingham's stance and stated comments  
25 in very strong terms stating that we would find



1 ourselves in legal difficulty if we continued on  
2 this path.

3 And there was also a voice of reason.

4 Pastor Warren Eshbach, who's a retired pastor  
5 at the Church of the Brethren, discussion on  
6 this had been going on in the community for some  
7 time, and it is obvious that there were strong  
8 feelings on all sides. That was apparent in  
9 both meetings from comments, not only from my  
10 former fellow board members but from members of  
11 the audience. Mr. Eshbach, Pastor Eshbach urged  
12 us to find a compromise position. Unfortunately  
13 by the second meeting we had not reached a  
14 compromise position since that had solidified.

168 15 Q. And what do you remember about that second  
16 meeting after having reviewed the two exhibits?

17 A. They did quote me more than I recall.

169 18 Q. Let me just try and refine the question.

19 Do you remember anything more about what  
20 Mr. Buckingham said at the second meeting after  
21 having reviewed --

22 A. Again he was adamant in his statements,  
23 and he apologized for some somewhat insulting  
24 remarks that he had made at the prior meeting.  
25 I personally took offense at his apology because

1 of his tone, but he did make the apology.

170 2 Q. One of the things that you testified about  
3 is that this two thousand year ago statement, I  
4 think you said it was in the first June meeting.  
5 Does reading these articles refresh your  
6 recollection about which meeting it occurred?

7 A. I switched the meeting, sir.

171 8 Q. When was that comment?

9 A. It would have been at the second meeting,  
10 sir.

172 11 Q. Thank you. Mr. Buckingham has testified in  
12 a deposition in this case that he didn't say  
13 that comment in either of the June meetings, he  
14 had said it at a much earlier meeting. Based on  
15 your recollection is that accurate?

16 A. No, sir, it is not accurate. The comment  
17 that he made at the June meeting that he had  
18 made previous, there were two. One was that the  
19 separation of church and state is a myth, and  
20 the other related to anyone, anyone who does not  
21 agree with bringing faith into the schools is  
22 un-American and should return to the place from  
23 which he or she came. Those two statements  
24 verbatim, they are not exact, I know that, were  
25 first made by Mr. Buckingham at the November

1 10th, 2003 board meeting, and it was an entirely  
2 different subject, sir.

173 3 Q. And they were repeated again in the June  
4 meeting?

5 A. They were indeed.

174 6 Q. But the two thousand years ago statement,  
7 that you recall as having being said at a June  
8 meeting?

9 A. Most definitely, sir. There is no doubt in  
10 my mind.

175 11 Q. Was the purchase of a biology book resolved  
12 at either of these June meetings?

13 A. No, sir, it was not.

176 14 Q. Were any other biology books under  
15 consideration at the time of these June  
16 board meetings?

17 A. Not at that point in time, sir. We  
18 had already discussed a number of texts in  
19 curriculum meetings with the teachers.

177 20 Q. And their recommendation at this time was  
21 the Miller-Levine book?

22 A. They felt, and I would have to agree that  
23 it fits, it fit the best of any of the textbooks  
24 available into our curriculum instructional  
25 guide and also with the then current state

1 academic guidelines.

178 2 Q. After these meetings in June did the board  
3 curriculum committee meet to discuss the biology  
4 books?

5 A. I'm sorry, sir. Yes, it did.

179 6 Q. When was that?

7 A. It was that same week I believe, and I had  
8 been in error on the date, but I believe it was  
9 that same week.

180 10 Q. After the --

11 A. The second meeting in June.

181 12 Q. And before or after the second meeting in  
13 June?

14 A. After the second meeting in June, sir.

182 15 Q. Where did this occur?

16 A. To the best of my recollection it occurred  
17 in the conference room at the high school, but  
18 I may be in error. It may have been in the  
19 conference room in the administration building.

183 20 Q. Who initiated this meeting? Who asked that  
21 it be had?

22 A. I believe it was a combination. We all  
23 wanted to resolve the issue, sir.

184 24 Q. Who attended the meeting?

25 A. Representatives from the science department

1 at the high school. To the best of my  
2 recollection Mrs. Bertha Spahr, who was then  
3 head of the science department, and ninth grade  
4 biology teachers Mrs. Jennifer Miller and  
5 Mr. Robert Eshbach who, is the son of Pastor  
6 Eshbach. Mr. Michael Baksa, the assistant  
7 superintendent. Mrs. Sheila Harkins,  
8 Mrs. William Buckingham, and myself. And  
9 Mr. Bonsell might have been there. But I cannot  
10 be certain.

185 11 Q. What happened at that meeting?

12 A. Basically Mr. Buckingham presented a list  
13 of his objections to the text, and we then  
14 reviewed them one by one.

186 15 Q. How many objections are we talking about?

16 A. I recall somewhere around twelve, fourteen.

187 17 Q. Did these objections have any common theme?

18 A. All of the objections, all of the page  
19 numbers that he objected to were listed in the  
20 index under Charles Darwin or Darwin's theory  
21 of evolution.

188 22 Q. I'm going to ask you, Matt, to pull up  
23 Exhibit 31, please. Do you recognize this as  
24 being the Prentice Hall biology textbook that  
25 was under consideration?

1 A. Yes, I do, sir.

189 2 Q. And Matt, could you turn to page 12 of the  
3 document? And actually pull up page 13 as well.  
4 Can you these those two pages on your monitor?

5 A. I recognize them, sir. I cannot read them.

190 6 Q. And what do you recognize them to be?

7 A. This was part of the introductory  
8 guidelines of science. Mr. Buckingham objected  
9 to Mr. Charles Darwin's inclusion, I believe  
10 it's 1859 when he first published his findings  
11 on theories of natural selection and related  
12 materials.

191 13 Q. Your Honor, may I approach the witness?

14 THE COURT: You may.

192 15 Q. I'm going to hand you a copy of the book if  
16 you want to refer to that, in addition to the  
17 page on the monitor.

18 A. Thank you, sir. This is a standard time  
19 line, sir.

193 20 Q. And was this one of the pages that  
21 Mr. Buckingham objected to?

22 A. Yes, sir, it was indeed his first page  
23 that he objected to.

194 24 Q. And what was his objection about this page  
25 or pages of the textbook?

1 A. There were no mentions of creationism or  
2 of God.

195 3 Q. Did he object to the mention of Charles  
4 Darwin on the time line at 1859 when he  
5 published origin of species?

6 A. He felt that we were misleading our  
7 students, not telling them the truth.

196 8 Q. By putting Mr. Darwin on the time line?

9 A. Yes, and by not including mentions of the  
10 theory of creationism and God as creator.

197 11 Q. Matt, could you turn to page 408 in the  
12 textbook? And Ms. Brown, if you want to take  
13 a minute and turn to that page?

14 A. I'm getting there. Yes, sir.

198 15 Q. This is a page that begins with the heading  
16 "Speciation in Darwin's finches." Was this  
17 among the items in the book that Mr. Buckingham  
18 objected to?

19 A. That was his last objection, sir.

199 20 Q. And what was his objection to the page  
21 about Darwin's finches?

22 A. Because the finch had been named for  
23 Charles Darwin.

200 24 Q. Did he say anything else about what he  
25 was objecting to?

1 A. That was his objection, sir.

201 2 Q. Darwin's name precedes finches, and that  
3 made the textbook objectionable?

4 A. Yes, sir.

202 5 Q. Did he say anything else about why he  
6 objected to the textbook?

7 A. He felt that it didn't give a balanced  
8 presentation. I don't believe that he had  
9 thoroughly read the text because he made  
10 reference of man ascending from lower species  
11 of anthropoids, and that is not part of the  
12 text material, sir.

203 13 Q. Did he say anything about what was missing  
14 that deprived the book of balance?

15 A. The theory of creationism with God as  
16 creator of all life.

204 17 Q. Did the teachers say anything in response  
18 to Mr. Buckingham's critique of the biology  
19 textbook?

20 A. We discussed each of his objections in  
21 great length. I say we advisably because I was  
22 part of the committee. The teachers explained  
23 that in the case of the science time line that  
24 this is just standard part of any text in the  
25 sciences. It basically gives the students a



1 reference point. They explained in great detail  
2 that they do not nor have they ever taught the  
3 origins of life. We did not have a policy  
4 concerning this, but we had custom.

5 This was what the science teachers in  
6 conjunction with one another had to come up  
7 with in response to any student question.  
8 If a student asked about the origins of life,  
9 our teachers made it a custom to refer the  
10 students to their parents or their pastors in  
11 their home churches. They indicated they did  
12 not feel qualified to cover this subject, nor  
13 was it part of our curriculum.

205 14 Q. Did Mr. Buckingham bring up any other  
15 subjects relating to evolution?

16 A. I believe he may have mentioned some kind  
17 of tape or CD or a tape. I'm not certain if it  
18 was that meeting, sir.

206 19 Q. Did he say anything about a mural that  
20 used to be displayed in the high school?

21 A. Yes, sir, he did.

207 22 Q. Give us some background about the mural  
23 that was in the high school. What was the  
24 mural?

25 A. The mural was a senior art project by one

1 of our former students. It was a wall-sized  
2 mural, and it depicted the ascent of man in a  
3 very graphic fashion, there was nudity, but it  
4 was his perception the way human beings have  
5 evolved based on his studies.

208 6 Q. And was this displayed in the high school?

7 A. When he donated it to the school it was  
8 placed on one of the walls of the science  
9 section.

209 10 Q. What happened to that mural?

11 A. When we began our building project many  
12 things were removed, and the wall, the mural  
13 was taken down. It was to be removed to safety.  
14 Our then current supervisor of buildings and  
15 grounds was deeply offended by the mural and  
16 took it upon himself to burn it.

210 17 Q. Do you know why he burned it?

18 A. He told me himself he felt that it was full  
19 of lies and it offended his religious faith, and  
20 he had a granddaughter who was coming into the  
21 high school at this point in time into the ninth  
22 grade and he did not want her or any other  
23 student to be exposed to the obscenity, sir.

211 24 Q. What happened to this individual as a  
25 result of destroying the mural?

1 A. He was reprimanded and subsequently  
2 retired.

212 3 Q. What did Mr. Buckingham say about the  
4 mural at this curriculum committee meeting?

5 A. He knew Mr. Reeser, they attended the same  
6 church. He was in sympathy with Mr. Reeser's  
7 actions. He felt Mr. Reeser had done the  
8 correct thing and that we were wrong to accept  
9 donations of this nature from our students or  
10 anyone.

213 11 Q. Did he say why Mr. Reeser had done the  
12 right thing?

13 A. He had removed an offensive obscene thing.

214 14 Q. Did anyone respond to that statement by  
15 Mr. Buckingham at this meeting, this curriculum  
16 meeting?

17 A. I did, sir.

215 18 Q. What did you say?

19 A. I said that it was not Mr. Reeser's place  
20 to make that decision.

216 21 Q. Did Mr. Baksa say or do anything at this  
22 meeting to respond to board members' concerns  
23 about the textbooks?

24 A. That came later in the meeting, sir.

25 As part of our ongoing discussion I believed

1 Mrs. Harkins, and I may be mistaken, but I think  
2 she first mentioned the idea of investigating  
3 what other districts, non-public schools were  
4 using in terms of science textbooks. By the end  
5 of the meeting to the best of my recollection  
6 Mr. Baksa had volunteered to do such research  
7 and bring the reports back to us, sir.

217 8 Q. Did there come a time during the summer of  
9 2004 when another book was being proposed for  
10 the high school biology class?

11 A. Yes, sir.

218 12 Q. And what was that book?

13 A. Of Pandas and People, sir.

219 14 Q. How did the book Of Pandas and People  
15 first come to your attention?

16 A. During a phone conversation with  
17 Mr. Michael Baksa the last weekend in July  
18 of 2004.

220 19 Q. What did he communicate to you?

20 A. It was just prior to the weekend, he  
21 communicated the fact that Mr. Buckingham  
22 had proposed an adjunct alternative text.

221 23 Q. And did he say it in that -- was this in  
24 a phone call or a face-to-face meeting?

25 A. That was a phone call, sir.

222 1 Q. And did he say what that book was?

2 A. He did indeed, and told me that we had  
3 several copies within the district.

223 4 Q. And did he say the name?

5 A. Of Pandas and People.

224 6 Q. Was this the first you had heard about  
7 Mr. Buckingham's interest in adding Pandas to  
8 the high school biology class?

9 A. Yes, it was, sir.

225 10 Q. What did you do when you heard this from  
11 Mr. Baksa?

12 A. My husband was home, he and I discussed it  
13 and felt that we needed to try and read as much  
14 of the material as we could prior to the  
15 following week's board meeting so that we were  
16 at least cognizant of what was inside the book.

226 17 Q. Were you able to get a copy of the book?

18 A. Yes. They did not have any copies  
19 available at the district administration office,  
20 but we learned that Mrs. Harkins had borrowed  
21 one of the copies, so she was finished with it,  
22 my husband picked it up from her home.

227 23 Q. Did you read it?

24 A. Yes, sir. My husband and I took turns  
25 reading it that weekend.

228 1 Q. Did you do anything else at this time  
2 to investigate the book?

3 A. Yes, sir, I did, because I was totally  
4 unfamiliar with the publisher and did not know  
5 the authors of the text. I researched on-line  
6 sir.

229 7 Q. What kind of on-line sites did you go  
8 to to find out information about the book?

9 A. I researched through scientific reviews,  
10 scientific journals, and the publishing houses  
11 themselves. I was looking for reviews of this,  
12 any other text materials, textbooks that this  
13 particular publishing house had brought forth,  
14 and I found none. I also wanted to know where  
15 it was being taught within America, and in my  
16 research I learned that it was not intended for  
17 the high school level, that it was written as a  
18 college level text, and I was unable to find any  
19 high schools, public or non-public, anywhere in  
20 the United States who were using the text.

230 21 Q. What conclusions did you draw about the  
22 book based on your own reading of it?

23 A. I said it at the meeting that I found it  
24 to be poor science and worse theology.

231 25 Q. And what meeting did you say that at?

1       A. The first meeting, the meeting in August,  
2       sir.

232 3       Q. And before we get to that meeting, what  
4       caused you to come to that conclusion upon  
5       reading the book? Why don't we start with the  
6       poor science and we can switch to poor theology.

7       A. Reading the material, the authors obviously  
8       had some scientific background. They had some  
9       impressive letters behind their name, but they  
10      took exhibits, facts, and seemed to twist them  
11      around to fit what they were proposing as an  
12      explanation for the origins of life, intelligent  
13      design. At no point in the text did they use  
14      the term God or creationism but, it would have  
15      been very, very easy throughout the entire text  
16      to replace intelligent design with the word  
17      creationism without changing the meaning in  
18      my opinion.

233 19      Q. Did this book Pandas come up as an issue  
20      at the next school board meeting?

21      A. Yes, sir, it did.

234 22      Q. That was in August?

23      A. Yes, sir.

235 24      Q. Did you gain an understanding about how  
25      Mr. Buckingham wanted the book Pandas be used

1 at Dover High School?

2 A. Mr. Buckingham stated at that meeting that  
3 he would give us our biology book if we gave him  
4 Of Pandas and People to be used side by side.

236 5 Q. When you say gave it to you, what do you  
6 mean gave it to you?

7 A. Mr. Buckingham made it very clear that he  
8 had the votes to prevent us from passing the  
9 motion to purchase the textbooks we so  
10 desperately needed unless we were willing to  
11 agree to purchase Of Pandas and People at the  
12 same time.

237 13 Q. So --

14 A. In essence what he said was if we voted for  
15 Of Pandas and People, he would release his votes  
16 to give us our biology text.

238 17 Q. So Mr. Buckingham was going to deprive the  
18 students at Dover High School of the biology  
19 textbook that their science faculty was  
20 recommending unless he got his Pandas book?

21 A. Yes, sir.

239 22 Q. Was there a vote taken on the biology  
23 textbook?

24 A. Yes, sir.

240 25 Q. And what was the result of that vote?



1 A. It was a four-four tie. We lost.

241 2 Q. Because I take it a tie goes to the  
3 defense?

4 A. Yes, sir. Mrs. Jean Cleaver was not  
5 present for the meeting.

242 6 Q. If it's a four-four tie the book is  
7 not approved?

8 A. Yes, sir.

243 9 Q. Same way the Supreme Court works?

10 A. Yes, sir. I think.

244 11 Q. Duly admonished. Ms. Brown, who were the  
12 people who voted for the approval of the --  
13 let me just back up. When we're talking  
14 about approve the vote here, this is on the  
15 Miller-Levine book?

16 A. Yes, sir.

245 17 Q. And who voted for the approval of the  
18 Miller-Levine book?

19 A. Mr. Alan Bonsell, the president of the  
20 board. Mr. Noel Renwick. My husband, and  
21 myself.

246 22 Q. And who voted against the approval of the  
23 book?

24 A. Mr. William Buckingham, Mrs. Heather  
25 Gessey, Mrs. Jean Cleaver, and Mrs. Angie

1 Yeungling. I'm sorry, not Mrs. Jean cleaver,  
2 she was not present. I'm going across the  
3 table. Mrs. Sheila Harkins.

247 4 Q. Thank you.

5 A. My apologies.

248 6 Q. Was there a second vote?

7 A. Yes.

249 8 Q. How did that happen?

9 A. A person who was on the winning side of the  
10 vote has the right to ask for a revote to be  
11 taken, and after much discussion Mrs. Angie  
12 Yeungling chose to ask for a revote, and she  
13 changed her vote because as she put it, "We have  
14 to let the kids have their books."

250 15 Q. So at that meeting the Miller-Levine book  
16 was approved?

17 A. Yes, sir, it was.

251 18 Q. Was there any vote taken on Of Pandas and  
19 People?

20 A. No, there was not a direct vote taken.

252 21 Q. What happened after that in the school  
22 district on the subject of Pandas?

23 A. One of the things that we had done to work  
24 through a compromise on the text, and we thought  
25 we had a compromise going into the meeting

1 regarding approval of the Levine text was to  
2 change our policy on gifts and donations. As  
3 policy chair I brought a revised policy forth on  
4 this to allow our superintendent Dr. Nilsen to  
5 have the primary responsibility of choosing to  
6 accept or reject gifts and donations. If he  
7 chose to reject, he was required to give a  
8 reason in writing. And by this time we had  
9 approved that and we did not purchase Of Pandas  
10 and People. They were donated, between fifty  
11 and sixty copies were donated anonymously to the  
12 school district, and according to that policy  
13 Dr. Nilsen accepted them.

253 14 Q. You said they were donated anonymously.  
15 Did the board or the school district ever  
16 announce publicly who donated the books?

17 A. Not to my knowledge. My only recollection  
18 on that point is that Dr. Nilsen stated they  
19 were donated anonymously.

254 20 Q. Was Dr. Nilsen asked who donated them?

21 A. Yes, he was.

255 22 Q. Did he disclose that information?

23 A. They wished to remain anonymous is I  
24 believe the way he put it.

256 25 Q. Do you know who donated the books?

- 1 A. I have heard rumors, sir.
- 257 2 Q. You have no personal knowledge?
- 3 A. Only through rumors.
- 258 4 Q. Can you tell us who you heard donated the  
5 books?
- 6 A. My understanding from various friends  
7 is that contributions were solicited in  
8 Mr. Buckingham's church, that was also  
9 Mrs. Cleaver's church, and they purchased some  
10 of the books. I understand or I heard rumors  
11 to the effect that Mr. Alan Bonsell's father,  
12 Mr. Don Bonsell, who had served on the board  
13 prior to his son, also donated some of the  
14 texts.
- 259 15 Q. Was it your understanding that the donated  
16 books were to be placed in the school science  
17 classrooms?
- 18 A. They were placed in the school science  
19 classrooms, sir.
- 260 20 Q. Was there a meeting of the curriculum, the  
21 board curriculum committee, in August of 2004?
- 22 A. Late August, sir.
- 261 23 Q. Did you attend that meeting?
- 24 A. Part of it, sir.
- 262 25 Q. Who else attended that meeting?

1       A. Because I was not there for the whole  
2 meeting I can't be totally certain, but to  
3 the best of my knowledge science teachers were  
4 present, Mrs. Miller, Mr. Eshbach, and I believe  
5 Mrs. Spahr, and I believe all of the  
6 aforementioned board members were there.  
7 Mrs. Harkins, Mr. Buckingham, Mr. Bonsell, and  
8 Mr. Baksa.

263    9       Q. And yourself?

10       A. And myself, part of the meeting.

264    11       Q. At that meeting were materials handed out?

12       A. Yes, sir, we received materials from  
13 Mr. Baksa.

265    14       Q. And would you turn to page 660 in your  
15 binder? And Matt, if you could pull up the  
16 first page of 660? And actually if you can,  
17 it may be easier just to flip throughout binder  
18 initially, Ms. Brown, just to look at the  
19 contents of the document, and when I ask you  
20 specific questions we'll use the monitor.

21       A. Yes, sir.

266    22       Q. Do you recognize the documents that are in  
23 your binder at Exhibit 660 as the materials  
24 Mr. Baksa handed out to you?

25       A. Yes, sir.

267 1 Q. And there are four pages to that document?

2 A. Yes, sir.

268 3 Q. The first is, it says, has the heading

4 "Dover area school district survey of biology

5 books used in area schools"?

6 A. Yes, sir.

269 7 Q. And there's handwriting at the top of the

8 page in rather large letters and numbers. Whose

9 happened writing is that?

10 A. That's my handwriting.

270 11 Q. And that depicts the date of August 27th,

12 2004?

13 A. To the best of my recollection. It

14 coincided with the curriculum meeting I had

15 noted on my calendar at home.

271 16 Q. Did you have a practice of dating the

17 documents you received as a member of the

18 school board?

19 A. Yes, sir, I did, and I evidently had made,

20 I don't recall, but to the best of my knowledge

21 based on past practice I made an error in the

22 date, and the date was corrected.

272 23 Q. And there's also handwriting under the

24 heading "Textbooks used," it says Modern Biology

25 if my reading is correct. Do you know whose

1 handwriting that is?

2 A. Mr. Michael Baksa's sir.

273 3 Q. Can you describe -- what do you know about  
4 this document? What is it?

5 A. To the best of my recollection this was  
6 some of the information Mr. Baksa had obtained  
7 in talking with in this case non-public schools  
8 in the York-Lancaster area, and he explained  
9 that he had only that morning received the name  
10 of the text being used by the Christian School  
11 of York, and that this had already been typed up  
12 and that's why he hand lettered the name of the  
13 book.

274 14 Q. So these were results from the  
15 investigation or survey Mr. Baksa had  
16 offered to do back in June?

17 A. Yes.

275 18 Q. And each of the schools that are listed  
19 here, Christian School of York, Delone Catholic,  
20 and York Catholic, these are religious schools?

21 A. Yes, sir. Delone Catholic is in Lancaster  
22 I believe.

276 23 Q. By this time students had a textbook,  
24 right? Miller & Levine's Biology?

25 A. I think we had already received them by

1 then, yes, sir. We had approved them.

277 2 Q. Certainly approved them. Why was this  
3 information Mr. Baksa was circulating here still  
4 relevant?

5 A. I'm not really sure, sir. I found this by  
6 accident.

278 7 Q. Do you know whether Mr. Baksa was still  
8 looking for a supplemental book for the biology  
9 curriculum?

10 A. It is possible, sir, he was.

279 11 Q. Could you turn to the next page of the  
12 document?

13 A. Yes, sir.

280 14 Q. And just to be clear here, there's four  
15 pages under Exhibit 660.

16 A. Yes, sir.

281 17 Q. And that group of four documents, were they  
18 handed out together by Mr. Baksa?

19 A. Yes, sir.

282 20 Q. And were they clipped or stapled in any  
21 way?

22 A. They were stapled, sir.

283 23 Q. And were these materials handed to  
24 everybody who was in attendance at that meeting?

25 A. To the best of my knowledge they would



1 have been.

284 2 Q. And that included fellow board members,  
3 Ms. Harkins?

4 A. Anyone present at that meeting. That was  
5 the usual practice, sir.

285 6 Q. And the board members in attendance were  
7 Ms. Harkins, Mr. Buckingham, Mr. Bonsell, and  
8 yourself?

9 A. To the best of my recollection.

286 10 Q. Can you tell us what this second page in  
11 this document is?

12 A. This second page is information related to  
13 a text for Christian schools.

287 14 Q. And if you look at the second paragraph of  
15 the document, does it indicate what title of  
16 that book is?

17 A. It is Biology for Christian Schools.

288 18 Q. And the publisher of that book?

19 A. Bob Jones University.

289 20 Q. Was there discussion about this page of  
21 the document?

22 A. I don't recall any discussion, but I was  
23 not there for the entire meeting, sir. The only  
24 discussion I recall was related to the first  
25 page and the books.

290 1 Q. Could you turn to the third page of the  
2 document, which is depicted in a landscape  
3 format, and I'd just like you to take a look  
4 at the document, I realize the writing is small,  
5 and we will, maybe you could pull up the heading  
6 on the document.

7 A. I can read the heading, sir.

291 8 Q. And why don't you read the heading of that  
9 document into the record.

10 A. "Views on the origin of the universe and  
11 life."

292 12 Q. And this was in the materials Mr. Baksa  
13 handed out?

14 A. That was the third page, sir.

293 15 Q. Do you know who had created this document?

16 A. No, I do not, sir.

294 17 Q. Matt, could you pull up the next line?

18 And this document seems to define various  
19 propositions, "Young earth creation, or creation  
20 science; progressive creation (old earth  
21 creation); evolutionary creation, (theistic  
22 evolution); deistic evolution ('theistic'  
23 evolution)," and I'm sure I'll mispronounce  
24 this, but "deistiological evolution (atheistic  
25 evolution)." Is that accurate?

1 A. Yes, sir.

295 2 Q. And I want to focus now on the first two  
3 columns in this document, which are young earth  
4 creation and progressive creation, and I just  
5 want to go over -- this document seems to  
6 identify certain aspects of each of these  
7 propositions?

8 A. I believe it does, sir.

296 9 Q. And if you could, Matt, we're going to be  
10 just looking at young earth creation and  
11 progressive earth creation, and Matt, if you  
12 could go to the second row where it says  
13 "Intelligent design in the world," and in the  
14 case of intelligent design of the world this  
15 document suggests that young earth creation and  
16 progressive creation are the same, they both  
17 point to a designer?

18 A. Yes, sir.

297 19 Q. Then we get to age of the universe, and in  
20 this case there is a difference. Young earth  
21 creation ten thousand years, progressive  
22 creation ten to fifteen billion years?

23 A. Yes, sir.

298 24 Q. Going on to evolution of life, here we're  
25 back in agreement again. Both reject

1 macroevolution, but accept microevolution?

2 A. Yes, sir.

299 3 Q. God's activity in the origin of the world?

4 A. Yes.

300 5 Q. And both say direct, but in the case of  
6 young earth creation intervention over six  
7 days, progressive creation interventions over  
8 billions of years. Is that correct?

9 A. Yes, sir.

301 10 Q. And going on to origin of humanity, we're  
11 back in agreement here. Both young earth  
12 creation and progressive creation accepted  
13 Adam and Eve, accepts image of God, accepts  
14 sin?

15 A. Yes, sir.

302 16 Q. And do you understand those to be basically  
17 biblical references?

18 A. Yes, sir.

303 19 Q. And then going to the last row, which is  
20 examples of each, in the case of young earth  
21 creation the examples are Institution for  
22 Creation Research, Henry Morris, Duane Gish,  
23 answers in Genesis, and Ken Hamm, and the  
24 examples under progressive creation are the  
25 intelligent design movement, Phillip Johnson,

1 Michael Behe, Hugh Ross, Bernard Ramm?

2 A. Yes, sir.

304 3 Q. And this is all contained in this document  
4 that the board members received?

5 A. Yes.

305 6 Q. And do you remember any discussion about  
7 this document?

8 A. No, I do not, but as I stated I was not  
9 present for the whole meeting, sir.

306 10 Q. Then there's a fourth document. If you  
11 could turn to that, Matt? And that's called  
12 "Beyond the Evolution Versus Creation Debate"?

13 A. Yes, sir.

307 14 Q. Again something that all the board members  
15 at that meeting received?

16 A. To the best of my knowledge, sir, yes.

308 17 Q. Sort of on the left-hand side of the page  
18 halfway down you see religion and philosophy?

19 A. Yes, sir.

309 20 Q. It says "Ultimate beliefs," and then for  
21 science, observations and experiments, theories  
22 and laws, correct?

23 A. Yes, sir.

310 24 Q. And board members got all of this?

25 A. Yes, sir.

311 1 Q. The board members at that meeting?

2 A. When I found it, it was together. That  
3 was how we received it.

4 THE COURT: If you're going to move on to a  
5 new topic --

6 MR. ROTHSCHILD: This would be a perfect  
7 time to break.

8 THE COURT: Yes, why don't we take a break  
9 now. Let's try to hold it to fifteen minutes.  
10 I think we'll go to about 12:15 and we'll break  
11 for lunch at that time, just to give you a  
12 notice. We'll be in recess.

13 (Recess taken at 11:04 a.m. Testimony  
14 resumed at 11:20 a.m.)

15 THE COURT: Be seated, please. We continue  
16 with direct examination by Mr. Rothschild.

17 DIRECT CONTINUED MR. ROTHSCHILD:

312 18 Q. Thank you, Your Honor. Good morning again,  
19 Ms. Brown.

20 A. Good morning.

313 21 Q. Did there come a time when you learned that  
22 there was a proposal to modify the biology  
23 curriculum at Dover High School?

24 A. The curriculum instructional guide, yes,  
25 sir.

314 1 Q. And how did you find out about that?

2 A. Initially from Mr. Baksa, sir, by a memo.

315 3 Q. By a memo? Could you turn in your notebook  
4 and also look on the monitor, whatever is better  
5 for you, at Trial Exhibit P-73? If you could  
6 look at the first page, is this the memo that  
7 you're referring to?

8 A. Yes, sir, it is.

316 9 Q. And it says, "Attached is a recommended  
10 curriculum change for biology. The changes  
11 were reviewed by the science department," and  
12 did you receive that at or around September  
13 20th, 2004?

14 A. Yes, sir, I did.

317 15 Q. And on the second page is a draft change  
16 to the curriculum guide?

17 A. Yes.

318 18 Q. Or a page of that?

19 A. Yes, sir.

319 20 Q. And on the page that is stamped Exhibit 29  
21 it says at the bottom, and I'm going to read it  
22 to you, because I know I'm also going to ask  
23 Matt to blow it up, but it says, "Students will  
24 be made aware of gaps in Darwin's theory and of  
25 other theories of evolution."

1 A. Yes, sir.

320 2 Q. And is that the recommended curriculum  
3 change that you remember receiving from  
4 Mr. Baksa at this time?

5 A. Yes, sir, it is.

321 6 Q. And did you -- was this the first time you  
7 were aware that a curriculum change was being  
8 proposed?

9 A. It was the first proposal I was aware of,  
10 yes.

322 11 Q. Did you respond to Mr. Baksa?

12 A. Yes, I did. I offered a couple of  
13 alternative wordings.

323 14 Q. If you could turn to P-681, and that will  
15 appear on your monitor, were these the suggested  
16 changes in the wording of what Mr. Baksa had  
17 sent you that you proposed in return?

18 A. Yes, it is.

324 19 Q. Did you tell him anything when you gave  
20 this to him?

21 A. We spoke very briefly, and I asked if the  
22 curriculum advisory committee was involved in  
23 the process, and he told me that Mr. Buckingham  
24 told him that it was not necessary to call a  
25 meeting of the curriculum advisory committee.



325 1 Q. And that's the citizens committee?

2 A. Yes, sir, it is.

326 3 Q. And did you agree with that statement

4 by Mr. Baksa, or what he was reporting

5 Mr. Buckingham had said?

6 A. I didn't agree with what he was reporting.

7 I felt that the curriculum advisory committee as

8 per our normal pattern should be part of it.

9 They're an integral part of the whole process.

327 10 Q. Did you receive subsequent to this exchange

11 a memorandum indicating that there would be a

12 meeting of the board curriculum committee to

13 discuss the biology curriculum?

14 A. Yes, sir, I did.

328 15 Q. And Matt, could you turn to Exhibit P-75?

16 And blow up the text, please. Is that the

17 memorandum you remember receiving?

18 A. Yes, sir, it is.

329 19 Q. Did you attend that meeting?

20 A. No, sir, I did not.

330 21 Q. And why was that?

22 A. I had an appointment with my ophthalmic

23 surgeon, sir.

331 24 Q. What was the next thing you found out about

25 the biology curriculum?

1       A. I learned that the teachers were not  
2       involved with the proposed changes. They  
3       were not part of the discussion.

332 4       Q. And when you're referring to the  
5       discussion, are you referring to the meeting  
6       of the biology curriculum, of the curriculum --

7       A. Subsequent to that I know that Mr. Bonsell  
8       was there, and they came up with changes in  
9       wording beyond what had originally been proposed  
10      on the 20th I believe.

333 11      Q. Did you receive any materials from  
12      Mr. Baksa with proposed curriculum changes?

13      A. We did indeed as part of our board  
14      materials just prior, the Thursday prior to  
15      the meeting.

334 16      Q. If you could turn in your notebook to  
17      Exhibit 84? And we have marked these exhibits  
18      as P-84-A, B, and C to correspond with how they  
19      were indicated as enclosures on the documents.  
20      You'll see the first is enclosure 11-A. If you  
21      could just look at P-84-A and P-84-B, were these  
22      materials you received on October 13th, 2004?

23      A. To the best I can read they are.

335 24      Q. Okay, and --

25      A. It's a little small.

336 1 Q. And the first one says that it is, 84-A  
2 says that, "Attached are the recommended changes  
3 to biology curriculum from the board curriculum  
4 committee," is that right?

5 A. Yes, sir.

337 6 Q. And there's an attachment to that  
7 memorandum?

8 A. Yes, there are attachments to those.

338 9 Q. And I'm going to -- if we could go to the  
10 next page which has the attachment, and I'm  
11 going to read from the bottom section of that  
12 page. It says, "Students will be made aware of  
13 gaps, problems, in Darwin's theory and in other  
14 theories of evolution, including but not limited  
15 to intelligent design." Is that the change to  
16 the curriculum proposed by the board curriculum  
17 committee that you remember hearing about at or  
18 around October 13th, 2004?

19 A. Yes, to the best of my recollection it is,  
20 sir.

339 21 Q. And then if we could turn to 84-B, which  
22 also indicates enclosure B, it says, "Attached  
23 are the recommended changes to the biology  
24 curriculum from the administration and staff."

25 A. Yes, sir.

340 1 Q. And in that, in the bottom section of that  
2 there's an attachment to that memorandum?

3 A. Yes, sir.

341 4 Q. And in the bottom section of that, and  
5 again I'll read to make this a little easier,  
6 it says, "Students will be made aware of gaps  
7 in Darwin's theories and of other theories of  
8 evolution."

9 A. Yes, sir.

342 10 Q. And do you remember that as being the  
11 change to the biology curriculum that Mr. Baksa  
12 represented to be the recommended changes from  
13 administration and staff?

14 A. Yes, sir.

343 15 Q. Thank you.

16 A. The difference, sir, in the main is the  
17 inclusion of under materials and resources under  
18 the previous, C, I'm not sure, the previous one  
19 is the inclusion of the reference to Of Pandas  
20 and People.

344 21 Q. And is another difference that the board  
22 curriculum committee's recommendation included  
23 mention of intelligent design?

24 A. Yes.

345 25 Q. And the one represented to come from

1 administration and staff did not?

2 A. Correct. It used only the terms theories  
3 of evolution with a small "E," sir.

346 4 Q. Was this the first time you became aware of  
5 the board curriculum committee's recommendation  
6 that intelligent design and the text Of Pandas  
7 and People become part of the curriculum?

8 A. Yes, sir.

347 9 Q. Was there a board meeting on October 18th,  
10 2004?

11 A. Yes, sir, there was.

348 12 Q. Did the board vote on a change to the  
13 biology curriculum at that meeting?

14 A. They voted on specific changes to the  
15 planned instruction curriculum guide, yes, sir.

349 16 Q. For biology?

17 A. For biology.

350 18 Q. Had there been an earlier meeting in  
19 October?

20 A. Yes, sir.

351 21 Q. Was that the planning meeting?

22 A. Yes, sir.

352 23 Q. Was the subject of a curriculum change for  
24 the subject of biology discussed at that  
25 planning meeting?

1       A. I don't recall the greater amount of the  
2       discussion, sir, but it was, there were many  
3       comments made.

353 4       Q. Let me just be clear. At this, not at the  
5       October 18th meeting but at the earlier meeting  
6       in October, the planning meeting, was there any  
7       discussion about the changes to the biology  
8       curriculum to include intelligent design at that  
9       meeting?

10       A. Not at that, not that part of it. There  
11       was ongoing discussion about the placement of  
12       Pandas and People in the classroom. My husband  
13       and I both had objected to the placement of it  
14       in the classroom. We felt it belonged in the  
15       reference section of the library.

354 16       Q. Was an actual curriculum change part of  
17       the discussion at this planning meeting?

18       A. Not that I recall, sir.

355 19       Q. Was that a deviation from custom and  
20       practice for the board not to discuss something  
21       that would be voted on at a subsequent meeting  
22       like a curriculum change at this planning  
23       meeting?

24       A. Sir, anything related to curriculum changes  
25       at this time of the school year was unusual.

356 1 Q. What do you mean by that?

2 A. There is a normal pattern related to  
3 curriculum specifically. We begin planning  
4 for changes to the curriculum the fall of the  
5 school year before. So in planning for changes  
6 for say the 2004/2005 school year we would begin  
7 meeting, discussing, researching in fall, the  
8 fall of 2003, and this was not the case. The  
9 normal procedures were not followed at all in  
10 making this change.

357 11 Q. And one way is that it happened after the  
12 school year was already underway?

13 A. Yes, and I had never experienced that  
14 during my entire tenure on the school board.

358 15 Q. And just to be clear, when school was  
16 underway for something that was to be  
17 implemented that school year?

18 A. That's correct, sir.

359 19 Q. And was it also unusual, putting aside the  
20 year, for something like this, a curriculum  
21 change to be voted on, when it hadn't been  
22 discussed at the planning meeting?

23 A. It was unheard of in my experience for all  
24 of the stakeholders not to be involved in any  
25 kind of change to our planned instructional

1 curriculum guide.

360 2 Q. Do you know if the curriculum advisory  
3 committee citizens committee was made aware  
4 of this change to the biology curriculum prior  
5 to the vote on October 18th?

6 A. It is my understanding from Mr. Baksa that  
7 he did make telephone calls to a number, if not  
8 all, of the committee, the advisory committee  
9 members. I do not know how many people with  
10 whom he spoke.

361 11 Q. Do you know whether the curriculum advisory  
12 committee had a meeting about this proposed  
13 change?

14 A. No, they did not.

362 15 Q. Do you know whether they provided any input  
16 at all prior to the vote about the proposed  
17 curriculum change?

18 A. We received a sheet containing two or,  
19 I believe two comments that Mr. Baksa had  
20 prepared. They were comments that he had  
21 received from I believe telephone calls he  
22 made to advisory committee members. I do  
23 not know who.

363 24 Q. Could you pull up Exhibit P-151, Matt?  
25 Is this the document that you received with



1 comments from the curriculum advisory committee?

2 A. It is, sir.

364 3 Q. And do you remember when you received it?

4 A. We received it just prior to the beginning  
5 of our board meeting on October 18th.

365 6 Q. Do you know who created this document?

7 A. To the best of my knowledge it was  
8 Mr. Baksa.

366 9 Q. And do you understand this to be his  
10 recording of what was told to him over the  
11 phone?

12 A. Yes. That is how he explained it to us.

367 13 Q. The heading is "Dover area school district  
14 curriculum advisory committee comments, comments  
15 on proposed biology curriculum changes from  
16 curriculum advisory committee." And could you  
17 read the entry for number 1?

18 A. "According to policy, curriculum advisory  
19 committee should review changes first before  
20 going to the board."

368 21 Q. And did you feel like that had not been  
22 followed in this case?

23 A. Most definitely it had not.

369 24 Q. Could you read with, there's a second  
25 statement.

1 A. "I disagree with the highlighted statement.  
2 Maybe we should meet as a curriculum committee."

370 3 Q. Did you have any understanding of what  
4 highlighted statement was being referred to?

5 A. To the best of my understanding it was  
6 the changes in the last sentence or two  
7 sentences in the biology curriculum guide.

371 8 Q. So just to summarize, the way this  
9 curriculum change came to a vote was irregular  
10 in the fact that the curriculum advisory  
11 committee had not been involved in the normal  
12 fashion?

13 A. Correct, sir.

372 14 Q. It was unusual in the fact that it was  
15 voted on during a school year to be implemented  
16 in that school year?

17 A. Yes, sir.

373 18 Q. It was unusual in that the teachers were  
19 not involved in that process, at least in  
20 meeting with the curriculum committee to come  
21 up with the proposed language?

22 A. To my understanding the final wording that  
23 came from the board curriculum committee, the  
24 teachers have no part at all in that. They only  
25 learned of it the morning of October 18th. The

1 meeting would have been that night. They met  
2 hastily and made their own comments, but they  
3 were not involved in preparing any of it, no,  
4 sir.

374 5 Q. And it was also unusual in that it had not  
6 been the topic of discussion at the planning  
7 meeting, the meeting before the vote?

8 A. That is correct, sir.

375 9 Q. At the board meeting on October 18th did  
10 you bring these procedural problems to the  
11 attention of the board?

12 A. Not in so many words, sir. We tried to  
13 amend what was being proposed. The minutes of  
14 the meeting do reflect that I think there were  
15 something like eighteen amendments proposed.  
16 The only change that was finally added was the  
17 teachers' note concerning, "Origins of life will  
18 not be taught."

376 19 Q. And I will ask you about that aspect of the  
20 event in a moment, but did anybody communicate  
21 in the board meeting or among board members  
22 separately can we slow down here, we haven't  
23 done this right?

24 A. My husband was very forthcoming in  
25 suggesting that we table this. We voted on

1 tabling it. That was defeated. There were  
2 a variety of tabling motions that were defeated.  
3 Mr. Renwick was our parliamentarian  
4 extraordinaire, and he offered many of those  
5 proposed amendments.

377 6 Q. But that was not successful?

7 A. No, sir. None of them were.

378 8 Q. If you could turn in the binder, and we'll  
9 also pull this up on the screen under Exhibit  
10 84, we have 84-C, and it says Enclosure C, and  
11 it's dated October 18th. It says, "Attached is  
12 a second draft of the recommended change to the  
13 biology curriculum from the administration and  
14 staff." Is this something that you received as  
15 a member of the school board?

16 A. Yes. We received it the night of the  
17 meeting, sir.

379 18 Q. Okay, and there's an attachment to that  
19 document?

20 A. Yes, there is.

380 21 Q. Another draft curriculum guide?

22 A. Yes, sir.

381 23 Q. Okay, and if you could turn to that page?  
24 And this is virtually impossible to read, but  
25 it says, "Students will be made aware gaps,

1 problems, in Darwin's theory and other theories  
2 of evolution. Notice, the origin of life is not  
3 taught," and here it does indicate the reference  
4 to Pandas and People. Do you remember that as  
5 the document, the attachment to the document you  
6 received on October 18th? Is that the language  
7 you remember?

8 A. Yes, sir.

382 9 Q. This document uses the expression "origins  
10 of life," and you brought it up in your  
11 testimony. When you use that term in the  
12 context of the biology curriculum and the  
13 teaching of evolution, what's your understanding  
14 of what that means?

15 A. How life began. Not simply on the earth,  
16 but in all of the universe that we know. From  
17 my own faith I believe in God the creator.

383 18 Q. I just want to -- I want to get your  
19 understanding of what the term meant as it  
20 was being used in the discussion of the biology  
21 curriculum. So your understanding as it  
22 pertained to this issue.

23 A. What the teachers did was to take custom  
24 and wanted to make it part of policy.  
25 Heretofore when students asked, as I testified

1 earlier, when students ask about the origins of  
2 life, the teachers' custom was to refer them to  
3 discussion with their parents, to their pastors,  
4 their home churches. This had been custom, not  
5 written, and I believe from talking with some of  
6 the teachers later on that what they were trying  
7 to do was to keep this just this side of the  
8 line legally by making it written policy. You  
9 don't get into trouble with custom. It's when  
10 you get into written policy that you can get  
11 into trouble.

384 12 Q. Did you understand the term as it was being  
13 used in these discussions to include for example  
14 the origin of species, including the human  
15 species?

16 A. Yes, you could interpret it that way, sir.

385 17 Q. Did you interpret it that way?

18 A. When I say all of life I mean all of life,  
19 from the smallest single cell to the greatest  
20 galaxy, sir. That's my understanding.

386 21 Q. Did you have any conversations with other  
22 board members about this specific language, what  
23 it means?

24 A. There had been conversations through a  
25 couple of years discussing faith versus science,

1 sir.

387 2 Q. Ultimately there was a vote on the change  
3 to the biology curriculum?

4 A. Yes, sir, there was a vote.

388 5 Q. And I'm going to ask you -- actually let  
6 me back up for a second. You said, testified  
7 earlier when we were talking about the June  
8 meeting that one of the things you advocate is  
9 that the concepts that they were talking about  
10 like creationism should be taught in for example  
11 a comparative religions class.

12 A. Yes, sir, I did.

389 13 Q. Rather than science.

14 A. Yes, sir.

390 15 Q. Did you renew that advocacy subsequently?

16 A. Yes, sir, I did.

391 17 Q. Did you do that --

18 A. At just about every meeting.

392 19 Q. Did you do that at the October 18th  
20 meeting?

21 A. Yes, I did, sir.

393 22 Q. Was that, when you said that, were you  
23 saying that intelligence design should be taught  
24 in that arena rather than science class?

25 A. Biology is a physical science. It is based

1 on teaching our students about the physical  
2 senses, the world around them. Intelligent  
3 design, like any other hypothesis, is a matter  
4 of faith to me, and it does not belong in  
5 science class. It belongs in, I believe the  
6 term would be a softer class, a softer  
7 discipline, such as comparative world religions,  
8 world philosophy, ancient philosophy, but that  
9 type of subject.

394 10 Q. And you made that point at the October 18th  
11 meeting?

12 A. Yes, I did, sir.

395 13 Q. There was a vote?

14 A. Yes, sir, there was.

396 15 Q. I understand there were a lot of amendments  
16 before a vote on what finally was passed  
17 occurred, but I'd like to focus on what was  
18 actually voted into the curriculum. If you can  
19 turn to Exhibit 209, Plaintiff's Exhibit 209?  
20 And this document is really the entire biology  
21 course curriculum guide, and you can look in  
22 your notebook if you want to flip through it.

23 A. Yes, sir.

397 24 Q. On page P-1646, and those are page numbers  
25 that the plaintiffs have affixed to these



1 documents during the course of this litigation,  
2 there's a section that reads -- and do you need  
3 a minute to flip through? It will also be on  
4 the screen, but take your time.

5 (Brief pause.)

6 A. Yes, sir.

398 7 Q. And at the top of the guide where it talks  
8 about unit, content, concepts, process, the  
9 chapters listed include 10, Natural Selection;  
10 11, the Mechanism of Evolution; and 12, the  
11 Origin of Biodiversity.

12 A. Yes, sir.

399 13 Q. And going all the way to the bottom of  
14 the page, under the unit, content, concepts,  
15 process -- just we need the bottom section  
16 there, Matt. Do you recognize this, and  
17 actually, Matt, if you could pull in the note  
18 at the bottom as well?

19 A. Yes, sir, I do.

400 20 Q. And is this what was actually voted in on  
21 October 18th?

22 A. That was approved on October 18th.

401 23 Q. That says, "Students will be made aware of  
24 gaps/problems in Darwin's theory and of other  
25 theories of evolution, including but not limited

1 to intelligent design." Then it has a note  
2 below it, "The origin of life is not taught."

3 A. Yes, sir.

402 4 Q. And it includes the instructional strategy  
5 lecture?

6 A. Yes, sir.

403 7 Q. And under materials and resources the  
8 reference Of Pandas and People?

9 A. Yes, it does, sir.

404 10 Q. And what I just read to at the bottom of  
11 the page there, that is what the board voted  
12 into effect on October 18th?

13 A. The final vote was for this.

405 14 Q. Who were the board members who voted for  
15 that change?

16 A. Mr. Alan Bonsell, Mr. William Buckingham,  
17 Mrs. Jean Cleaver, Mrs. Heather Gessey,  
18 Mrs. Sheila Harkins, Mrs. Angie  
19 Ziegler-Yeungling.

406 20 Q. And who voted against the change to the  
21 curriculum?

22 A. Mr. Noel Renwick, Mr. Jeffrey Allen Brown,  
23 and myself.

407 24 Q. After this vote, what happened? What did  
25 you do?

1       A. At the end of the meeting, sir, when we  
2       opened for final public comment I requested  
3       recognition from the chair from president  
4       Bonsell, and I resigned.

408 5       Q. At the meeting did you explain why you  
6       resigned?

7       A. Yes, sir, I did.

409 8       Q. Do you remember what you said?

9       A. Not verbatim, sir.

410 10      Q. Did you read from a prepared text?

11      A. Yes, I did, sir.

411 12      Q. Matt, could you pull up Exhibit 688? Is  
13      this the first page of your resignation speech  
14      on October 18th, 2004?

15      A. It is, sir.

412 16      Q. I'm going to ask, Matt, could you turn to  
17      page 2 of the document? And this is what you  
18      read to everybody in attendance, "Fellow board  
19      members and the community"?

20      A. Yes, it is, sir.

413 21      Q. I'd like you to, starting at the second to  
22      last paragraph, to read what you said to the  
23      board and the community when you resigned.  
24      It's in your book as well on Exhibit 688.

25      A. I can read it. "We as board members serve

1 as the representatives of our community to our  
2 district. We are responsible for making policy,  
3 for seeing that the district is in compliance  
4 with and remains in compliance with all  
5 applicable state and federal guidelines mandates  
6 and laws. We are here as representatives of all  
7 of the members of our community and to represent  
8 all viewpoints of our community, and we cannot  
9 favor one segment or one viewpoint over  
10 another."

414 11 Q. Could you continue reading, please?

12 A. "Sometimes in order to fulfill the  
13 requirements of our office we must put aside  
14 our personal feelings and beliefs. It is not  
15 always an easy thing to do, but it is what we  
16 must do in order to properly perform the duties  
17 and responsibilities of our office. In the past  
18 year regrettably there seems to have been a  
19 shift in the attitudes and direction of this  
20 board.

21 "There has been a slow but steady  
22 marginalization of some board members. Our  
23 opinions are no longer valued or listened to.  
24 Our contributions have been minimized or not  
25 acknowledged at all. A measure of that is the

1 fact that I myself have been twice asked within  
2 the past year if I was 'born again.' no one  
3 has, nor should have the right, to ask that of a  
4 fellow board member. An individual's religious  
5 beliefs should have no impact on his or her  
6 ability to serve as a school board director,  
7 nor should a person's beliefs be used as a  
8 yardstick to measure the value of that service.

9 "However, it has become increasingly  
10 evident that in the direction the board has  
11 now chosen to go, holding a certain religious  
12 belief is of paramount importance. Because of  
13 this, it is quite clear that I can no longer  
14 effectively function as a member of this board,  
15 that I can no longer properly represent the  
16 members of this community, and I apologize to  
17 them for this failure.

18 "Accordingly, effective immediately, and  
19 with deepest regret, I am stepping down from the  
20 Dover school board, as well as from the board  
21 and authority of the York County School of  
22 Technology. I shall pray for you all, pray  
23 that you will find the wisdom to separate your  
24 personal beliefs and desires from the proper  
25 fulfillment within the law of the duties and

1 responsibilities of your office. I shall pray  
2 that you will learn to represent all of the  
3 members of our community and all of their  
4 viewpoints with impartiality and with grace."

415 5 Q. Thank you, Ms. Brown. Does the speech that  
6 you read reflect your view about how the change  
7 in the biology curriculum came about?

8 A. Yes, it does.

416 9 Q. Does it reflect your views about the  
10 general environment on the board at this time  
11 period?

12 A. With deepest regret I must say that it  
13 does.

417 14 Q. After this vote had occurred did any  
15 members of the board say anything to impugn  
16 your religious beliefs or religious faith?

17 A. Yes, sir.

418 18 Q. How many board members do you recall doing  
19 that?

20 A. Two board members, sir.

419 21 Q. Who were they?

22 A. One was William Buckingham.

420 23 Q. Who was the other one?

24 A. Mr. Alan Bonsell.

421 25 Q. What did Mr. Buckingham say to you?

1 A. He decried my beliefs, called me an  
2 atheist.

422 3 Q. When did that happen?

4 A. That was just after my stepping down  
5 from the board.

423 6 Q. When did Mr. Bonsell say something to you  
7 that you that you felt impugned your religious  
8 faith or your religious beliefs?

9 A. It was later on, a couple of months later,  
10 sir.

424 11 Q. And what was the setting when this  
12 occurred?

13 A. It was during a recess during a regular  
14 board meeting.

425 15 Q. What did he say to you?

16 A. He accused me and my husband of destroying  
17 the board, and he impugned my faith.

426 18 Q. What did he say?

19 A. He told me I would be going to hell.

20 MR. ROTHSCHILD: I have no further  
21 questions, Your Honor.

22 THE COURT: All right, thank you,  
23 Mr. Rothschild. Cross examination by  
24 Mr. Gillen?

25 MR. GILLEN: Judge, just if you want to go

1 on until 12:15 that's fine, but I might take a  
2 good bit of time --

3 THE COURT: Well, you think you will?

4 MR. GILLEN: Yes.

5 THE COURT: All right. Well, then it's  
6 probably an appropriate place to stop rather  
7 than interrupt you at mid cross examination.  
8 So contrary to what I said why don't we take  
9 our lunch break now, even though we've had a  
10 rather abbreviated session. So we'll break,  
11 why don't we break until let's say 1:15. I  
12 think that should give us plenty of time, and  
13 we'll reconvene -- actually let's say, there's  
14 some matters I must attend to. Let's say 1:30,  
15 and we'll reconvene at 1:30.

16 MR. GILLEN: Thank you Your Honor.

17 (End of Volume 1 at 11:53 a.m.)

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1           Kitzmiller, et al. vs. Dover School Board

2                   Trial Day 3, Morning Session

3                           4:04-CV-02688

4                           29 September 2005

5

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7

8                   I hereby certify that the proceedings

9           and evidence are contained fully and accurately

10           in the notes taken by me on the trial of the

11           above cause, and that this copy is a correct

12           transcript of the same.

13

14

15

16   s/ Wesley J. Armstrong

17   \_\_\_\_\_

18   Wesley J. Armstrong

19   Registered Merit Reporter

20

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