

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

3
4 Tammy J. Kitzmiller, et al., :
5 :
6 vs : 4:04-CV-2688
7 :
8 Dover Area School District; :
9 Dover Area School District :
10 Board of Directors :

11 BEFORE: Honorable John E. Jones III
12 PLACE: Harrisburg, Pennsylvania
13 PROCEEDINGS: Non-Jury Trial
14 DATE: Thursday, November 3, 2005;
15 9:15 a.m.

16 MORNING SESSION

17 APPEARANCES:
18 For the Plaintiffs: ERIC J. ROTHSCHILD, ESQ.
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20 STEPHEN G. HARVEY, ESQ.
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22 For the Defendants: PATRICK T. GILLEN, ESQ.
23 RICHARD THOMPSON, ESQ.
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25

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(9:22 a.m., convene.)

THE COURT: All right, good morning to all. We resume with continued cross examination of Mr. Baksa. And Mr. Rothschild, whenever you're ready you may proceed.

MR. ROTHSCHILD: Thank you, Your Honor.

(Mr. Baksa resumes witness stand.)

CROSS EXAMINATION (Cont'd.)

BY MR. ROTHSCHILD:

Q Good morning, Mr. Baksa.

A Good morning.

Q When we left off yesterday we were discussing an aspect of what was approved on October 18th, which is the note that origins of life is not taught. Do you remember that?

A Yes.

Q And as we discussed, that means that in addition to whatever effect it had on intelligent design, it also means that teachers in Dover won't teach what we call macro evolution and speciation, correct?

A They -- in the past they had not taught that.

Q Okay. And that was something that when the board found out about that, that was something that satisfied some of their concerns, correct?

A Yes.

MR. ROTHSCHILD: Your Honor, may I approach?

OFFICIAL COURT REPORTER

1 THE COURT: You may.

2 BY MR. ROTHSCHILD:

3 Q Mr. Baksa, what I've just given to you is what
4 we've marked as plaintiff's exhibit 31, which is the Miller
5 and Levine textbook for 2004 that is now being used in Dover
6 High School. Could you turn to page 381 of that book?

7 If you look at the bottom of the page, there's a
8 heading "Descent with Modification"?

9 A Okay.

10 Q And it says, "Darwin proposed that over long
11 periods natural selection produces organisms that have
12 different structures, established different niches, or
13 occupy different habitats. As a result, species today look
14 different from their ancestors. Each living species has
15 descended with changes from other species over time. He
16 referred to this principle as descent with modification."

17 Under the board's policy that origins of life is
18 not taught, that aspect of evolution cannot be taught to the
19 Dover High School students, correct?

20 A That I wouldn't know. The teachers make decisions
21 on the content in the chapters and the material -- they
22 choose the material they use to teach to the instructional
23 goals that they've set for the course. Whether they would
24 include this information, I wouldn't know that.

25 Q Okay, but it does say each living species has

1 descended with changes from other species over time. Do
2 you -- you understand that to be speciation, right?

3 A Yes.

4 Q Okay. And as we've discussed, under the board's
5 policy stating that origins of life is not taught,
6 speciation is out, right?

7 A Well, again, I would defer, I mean that's -- I'm
8 not a science teacher, and the manner in which they would
9 use this content, I wouldn't know. I don't know if there's
10 an appropriate manner they would be able to use with the
11 curriculum change or not. I think they would be the best to
12 determine that.

13 Q Certainly any science teacher faced with a policy
14 from the board that says origins of life is not taught, and
15 the understanding that, by that, the board means no
16 speciation or macro evolution, a teacher would have reason
17 to believe that he or she couldn't teach this aspect of the
18 Miller-Levine textbook; would you agree?

19 A My understanding from what -- in my meeting with
20 teachers is that the curriculum change would not affect any
21 of the past instructional objectives they've had, or the
22 teaching that they've done in the past. They would teach
23 the same course, same materials, same instructional goals as
24 they had in the past even with the new curriculum change.

25 Q But you would agree that whatever their practice

1 was in the past, that discretion has now been removed from
2 them and now it is policy, origins of life is not taught?

3 A Yes.

4 Q And if you could turn to page 404 of the textbook.
5 It s headed, The Process of Speciation. Based on your
6 understanding of the note origins of life is not taught,
7 that subject matter is also off limits for the teachers,
8 isn t it?

9 A Again, I don t know how the teachers would use this
10 content and if it would be permissible or not. Again, that
11 would be their -- their professional judgment on choosing
12 the materials and the content.

13 Q Including their judgment about what the board s
14 policy means, correct?

15 A I would think they would have to make a judgment on
16 that.

17 MR. ROTHSCHILD: Matt, could you pull up exhibit
18 P-210.

19 May I approach, Your Honor.

20 THE COURT: You may.

21 BY MR. ROTHSCHILD:

22 Q Mr. Baksa, do you recognize P-210?

23 A Yes.

24 Q Could you turn to page 13 of that document.

25 Actually, if you could turn to page 12 first.

1 A Okay.

2 Q And you see that it s section 3.3, Biological
3 Sciences?

4 A Yes.

5 Q And it has objectives for grade ten and grade 12?

6 A Yes.

7 Q And if you turn over to the next page, under
8 subheading D, there are instructional goals for the theory
9 of evolution?

10 A Yes.

11 Q And for tenth grade, which is the second to the
12 right column, it says, "Explain the mechanisms of the theory
13 of evolution," right?

14 A Yes.

15 Q And under that it says, "Analyze data from fossil
16 records, records, similarities in anatomy and physiology,
17 embryological studies and DNA studies that are relevant to
18 the theory of evolution." You understand that those are all
19 types of evidence that are relevant to the issue of macro
20 evolution, don t you?

21 A Yes.

22 Q And based on what we ve discussed, the note origins
23 of life is not taught, these aspects of the standards would
24 be outside the Dover High School curriculum, correct?

25 A No. My understanding is, I remember in one of the

1 meetings with the board curriculum committee, I remember
2 Mr. Eshbach saying that when talking about common ancestry,
3 that the way they presented it is the evidence in DNA. And
4 I remember his explanation of how they present it, that
5 linkage was satisfactory to the board. So I do remember our
6 teachers talking about they do teach about the DNA.

7 Q You were here when Mr. Bonsell testified, right?

8 A Yes.

9 Q And what he said was his understanding of what the
10 teachers do, and what was memorialized in the note origins
11 of life is not taught, is that the teachers would only teach
12 micro evolution, change within a species, correct?

13 A Yes.

14 Q And not the fact that different species had common
15 ancestors, correct?

16 A Correct.

17 Q And if he had that understanding, it s reasonable
18 to believe the teachers had that understanding, wouldn t you
19 agree?

20 A Well, the teachers did say they were teaching DNA
21 as to demonstrate common ancestry. And they did say that to
22 the board curriculum committee.

23 Q You would agree at best there s a -- there s
24 uncertainty about whether teachers can teach these various
25 pieces of evidence for common ancestry?

1 A My understanding is that the -- even as we were
2 drafting the language with the teachers, that the teachers
3 did not feel that the new language would in any way inhibit
4 them or prohibit them from teaching any of the content that
5 they ve taught in the past.

6 Q Could you go down to the third bullet point under D
7 in the second to right column.

8 A Okay.

9 Q It says, "Compare modern day descendents of extinct
10 species and propose possible scientific accounts for their
11 present appearance." Would you agree that that is an
12 analysis that relates to the issue of speciation?

13 A From that, I wouldn t know.

14 Q And then if you go over to the objectives for
15 twelfth grade, under D, "Analyze the theory of evolution,"
16 it says, "Examine human history by describing the
17 progression from early hominids to modern humans." Do you
18 see that?

19 A Yes.

20 Q So that would require students to learn about
21 common ancestry of humans with prior species, correct?

22 A Well, I don t know -- I don t know that -- I m not
23 familiar with the term hominids, if that is a species that
24 is different, in this standard, to modern humans. So I
25 don t know how our staff does approach that and if that

1 would present a problem to them.

2 Q Sitting here today you don t know whether under the
3 policy established by the school board, whether teachers
4 could teach, consistent with that policy, the objective --
5 this objective in the Pennsylvania state standards?

6 A Right. I would have to rely on the teachers,
7 whether they felt there was anything that prohibited them
8 from teaching any of the standards.

9 Q And as we discussed, the teachers would have to
10 make a judgment whether, in doing that, they would be
11 violating the board s policy, correct?

12 A Correct.

13 Q Going back to the October 18th meeting. You did
14 observe Mrs. Yingling, Angie Yingling, being told that she
15 would be an atheist or unChristian if she did not vote for
16 the intelligent design resolution?

17 A No.

18 Q Mr. Baksa, could you turn to your March deposition,
19 page 174. And, Mr. Baksa, you were under oath that day when
20 you -- when you gave your testimony at that deposition?

21 A Yes.

22 Q And you did your best to tell the truth?

23 A Yes.

24 Q Could you look at the question on line ten of page
25 174. I asked you, "In articles, after the resolution was

1 voted on, Angie Yingling has been quoted as saying that
2 members of the board suggested that she would be atheist or
3 unChristian if she didn t vote for the intelligent design
4 resolution. Did you observe any remarks of that kind?" And
5 you answered, "Yes."

6 Is that right?

7 A Yes.

8 Q And that was your truthful testimony that day,
9 correct?

10 A Yes. And what I m answering is you began the
11 question -- this is my understanding -- you said, "In
12 articles after resolution." I did read about that in the
13 articles and that s how I answered the question.

14 Q Mr. Baksa, I asked you, did you observe any remarks
15 of that kind?

16 A And I m telling you, I understood that question to
17 be preceded within articles, because then you asked me about
18 Casey Brown, whether I did anything, but you don t use the
19 word "in articles" in there, and I said no, I did not hear
20 any personal remarks to board members.

21 Q In any event, you re not aware of anybody trying to
22 correct that allegation by Ms. Yingling in that newspaper,
23 is that true?

24 A Yes.

25 MR. ROTHSCHILD: May I approach?

1 THE COURT: You may.

2 MR. ROTHSCHILD: Matt, could you pull up P-91.

3 BY MR. ROTHSCHILD:

4 Q Mr. Baksa, do you recognize P-91?

5 A Yes.

6 Q What is it?

7 A It s an e-mail to me from Brad Neal, one of our
8 Social Studies teachers.

9 Q And then also a response from you to Mr. Neal,
10 correct?

11 A Yes.

12 Q And what Mr. Neal -- and this e-mail was sent to
13 you in the morning of October 19th?

14 A Yes.

15 Q And that was the morning after the resolution was
16 passed, correct?

17 A Yes.

18 Q What Mr. Neal wrote to you is, "In light of last
19 night s apparent change from a, quote, standards-driven,
20 close quote, school district, to the quote, living
21 word-driven school district, Mr. Hoover and I would like
22 some direction in how to adapt our judicial branch unit.
23 It s apparent that the Supreme Court of the United States
24 has it all wrong. Is there some supplemental text that we
25 can use to set our students straight as to the, quote, real,

1 close quote, law of the land? We will be entering this unit
2 within the next month and are concerned that we would be
3 polluting our students minds if we continue to use our
4 curriculum as currently written in accordance with the PA
5 standards."

6 That s what Mr. Neal wrote to you?

7 A Yes.

8 Q And you responded to him, right?

9 A Yes.

10 Q And what you wrote is, "Brad, all kidding aside, be
11 careful what you ask for. I ve been given a copy of the
12 *Myth of Separation* by David Barton to review from board
13 members. Social Studies curriculum is next year. Feel free
14 to borrow my copy to get an idea of where the board is
15 coming from. Thanks." That s how you responded, right?

16 A Yes.

17 Q You responded to the Social Studies teacher, I have
18 some information, I ll let you know where the board is
19 coming from.

20 A Yes.

21 Q And when you talked about getting a copy of this
22 book, *Myth of Separation*, by David Barton from board
23 members, I think you told me at your deposition it was
24 actually a particular board member.

25 A I believe Dr. Nilsen gave it to me and told me that

1 it came from Mr. Bonsell.

2 Q Right. And you did take a look at that book,
3 right?

4 A I didn't -- I glanced through it.

5 Q And you understand that this book was an argument
6 against the principles of separation of church and state,
7 right?

8 A Yes.

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

10 THE COURT: You may.

11 BY MR. ROTHSCHILD:

12 Q Mr. Baksa, what I'm going to hand you is exhibit
13 P-179, which is the *Myth of Separation* by David Barton. And
14 this was the book that you were passing on to Mr. Neal so he
15 would get an idea where the board is coming from on the
16 issue of Social Studies curriculum, correct?

17 A Yes.

18 Q Can you turn to page 46 of the book. And if you
19 look at that --

20 A Yes.

21 Q -- last paragraph, could you read the first
22 sentence of that?

23 A The very last paragraph?

24 Q Yes.

25 A "The doctrine of separation of church and state is

1 absurd; it has been repeated often; and people have believed
2 it. It is amazing what continually hearing about separation
3 of church and state can do to a nation."

4 Q And then if you go to the next page, page 47, the
5 title of the chapter is, "We Are a Christian Nation,"
6 correct?

7 A Yes.

8 Q And then if you could turn to page 82 of the book.
9 The last sentence of the chapter reads, "Our fathers
10 intended that this nation should be a Christian nation, not
11 because all who lived in it were Christians, but because it
12 was founded on and would be governed and guided by Christian
13 principles." Correct?

14 A Yes, sir.

15 Q And then if you could turn to page 260, this is a
16 paragraph -- a chapter titled "The Solution." If you look
17 in the first full paragraph, what Mr. Barton writes in the
18 book that Mr. Bonsell is recommending is, "We must recall
19 our foundation and former values and establish in our
20 thinking the conviction that this nation's institutions must
21 return to their original foundation -- the principles
22 expressed through the Bible." Is that correct?

23 A Yes.

24 Q And one more passage. This is at page 264.

25 A Okay.

1 Q I m sorry, 265. And what Mr. Barton recommends is
2 part of the solution is that -- if you could highlight that
3 first sentence -- "Morality acquired only with emphasis from
4 religious principles must again become an emphasis in
5 education." This is where the board was coming from, right
6 Mr. Baksa?

7 A Mr. Bonsell -- my understanding is that when I
8 received the book from Mr. Bonsell, and in my earlier
9 conversations with him when I first came to Dover, I did
10 have conversations and Mr. Bonsell expressed to me a desire
11 to make sure that our students learned about the founding
12 fathers in the constitution. I mean that s the extent of my
13 knowledge of, you know, his emphasis on the founding
14 fathers.

15 Q And this book?

16 A Yes.

17 Q And the emphasis on the founding fathers in this
18 book is about this being a Christian nation and that
19 morality in education should be acquired only from religious
20 principles, right?

21 A Well, I haven t read the whole book to agree with
22 the emphasis. Certainly the passages you pointed out point
23 to that.

24 Q And so these are the two areas of curriculum that
25 Mr. Bonsell has devoted his attention to, alternatives to

1 the theory of evolution, and telling the students that this
2 nation was founded as a Christian nation and must return to
3 that condition.

4 A Well, I don t remember Mr. Bonsell ever telling me
5 that we need to -- this nation is a Christian nation and we
6 need to return to that. I remember him talking about making
7 sure that we devoted sufficient time to teaching about the
8 founding fathers and the constitution.

9 Q And the one book that he gave you to explain what
10 he meant was this book, the *Myth of Separation*?

11 A That s correct.

12 Q After the October 18th meeting you prepared a
13 draft statement to be read to the students, correct?

14 A Yes.

15 MR. ROTHSCHILD: Matt, could you pull up D-65.

16 May I approach, Your Honor?

17 THE COURT: You may.

18 MR. ROTHSCHILD: Could I approach and get the other
19 copy of the book?

20 THE COURT: Sure.

21 MR. ROTHSCHILD: Appreciate it.

22 BY MR. ROTHSCHILD:

23 Q D-65 is your first draft of the statement that
24 would be read to students.

25 A Can I read it?

1 Q Yeah, sure.
2 A Yeah, that s my original draft.
3 Q And then as you said, Mrs. Miller -- you gave it to
4 Mrs. Miller to review.
5 A Yeah. Well, I think I gave more than one -- I
6 might have given it just to Mrs. Miller but I might have
7 given it to all of the biology teachers though Mrs. Miller.
8 Q Certainly Mrs. Miller, right?
9 A Yes.
10 Q And you directed her to review it, correct?
11 A Yes.
12 Q And she made some suggestions about how to edit it,
13 correct?
14 A Yes.
15 MR. ROTHSCHILD: May I approach, Your Honor?
16 THE COURT: You may.
17 MR. ROTHSCHILD: Matt, could you pull up exhibit,
18 defendant s exhibit 90.
19 BY MR. ROTHSCHILD:
20 Q And exhibit D-90 has your handwritten notes on it,
21 correct?
22 A Yes.
23 Q Okay. And it says, "Teachers response to the
24 original draft by M. Baksa -- or Mr. Baksa"?
25 A Yes.

1 Q And the bolded text is -- reflects the teachers
2 edits, correct?
3 A Yes.
4 Q And, for example, in the first paragraph it adds
5 the words "eventually take a standardized test" and that s
6 in there because actually they weren t going to take a
7 standardized test for a few years, right?
8 A That s right.
9 Q And then if you go to the next paragraph,
10 Mrs. Miller, or the teachers added the language to your
11 language, "Darwin s theory is a theory," by saying, "there
12 is a significant amount of evidence that supports the
13 theory, although" -- and then it continues with your
14 language -- "it is still being testing as new evidence is
15 discovered." Right?
16 A Yes.
17 Q And then the teachers also added some text in terms
18 of how intelligent design was going to be presented,
19 correct?
20 A Yes, and that the theory is not a fact.
21 Q Okay. And actually that is not entirely their
22 language. If you go to your draft exhibit D-65.
23 A Okay.
24 Q You had the language, "the theory is not a fact,
25 nor the only one." And they just changed that to "the

1 theory is not a fact," correct?

2 A Yes, it s correct that they didn t delete it.

3 Q Right. And they -- you had language in your draft
4 about intelligent design being another theory of evolution.
5 And they changed that to be an explanation of the origin of
6 life that differs from Darwin s view, right?

7 A Yes.

8 Q Now, the version that you drafted didn t become the
9 final version, correct?

10 A Right.

11 Q And the version that we see on defendant s exhibit
12 90, which incorporates some suggestions by the teachers,
13 also didn t become the final version, correct?

14 A That s correct.

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

16 THE COURT: You may.

17 BY MR. ROTHSCHILD:

18 Q Mr. Baksa, I ve shown you defendant s exhibit 91.

19 A Yes.

20 Q And that has your handwritten notes on it, correct?

21 A Yes.

22 Q And it indicates that there are edits by you and
23 the board?

24 A Correct.

25 Q And when we talk about the board here, who on the

1 board is editing these drafts?

2 A The board, I believe we were in the executive
3 session, and the board -- I distributed the initial draft to
4 the board and asked for their feedback. And then I remember
5 suggestions from Mrs. Harkins and Mrs. Geesey.

6 Q So when we see lines striking some of the text
7 here, those reflect suggestions by Mrs. Harkins and
8 Mrs. Geesey?

9 A Correct.

10 Q And the rest -- and the rest of the board in
11 executive session agreed with those changes?

12 A Yes.

13 Q And let s look --

14 A Well, my edit is the -- in the first paragraph, the
15 deleted first sentence is a board edit.

16 Q Right.

17 A My edit -- I believe the second paragraph is my
18 edit.

19 Q All right. Let s discuss the first edit first.
20 You had actually suggested this language, "Darwin s theory
21 of evolution continues to be the dominant scientific
22 explanation of the origin of species." Right, that was in
23 your original draft?

24 A Yes, sir.

25 Q And when the teachers reviewed it, they didn t

1 excise that language.

2 A Yes.

3 Q You had every reason to believe that s actually an
4 accurate portrayal of Darwin s theory of evolution, right?

5 A Yes.

6 Q But the board required you to take that out.

7 A Yes.

8 Q If that language had been left in, students would
9 have learned from their teachers, or whoever read the
10 statement, that Darwin s theory of evolution is the dominant
11 scientific explanation of the origin of species, right?

12 A Yes.

13 Q And you would agree that the message to the
14 students -- and this language did not make it into the final
15 version, correct?

16 A Correct.

17 Q And you would agree with me that the message to the
18 students about the soundness of the theory of evolution is
19 very different without this language than with it, wouldn t
20 you?

21 A Well, this is a one-minute statement, and the
22 teachers are teaching the content in Miller and Levine,
23 which I think reading those chapters, the students would get
24 that information.

25 Q Okay. But this is the first thing that students

1 are told when they start the subject of the theory of
2 evolution, correct?

3 A That s correct.

4 Q You thought it was a good idea, and the teachers
5 agreed with you, to communicate to the students this is the
6 dominant scientific explanation, this is what the scientific
7 community accepts, right?

8 A That s correct.

9 Q But the board didn t want that language in,
10 correct?

11 A That s correct.

12 Q Okay. And then there s the strike of the language,
13 "There is a significant amount of evidence that supports the
14 theory." And you said that was your own edit, right?

15 A Yes.

16 Q Now, that was something that Mrs. Miller or the
17 teachers added to your draft statement, correct?

18 A Yes.

19 Q And you recognized them to be the scientific
20 experts in the community, right?

21 A Yes.

22 Q And you had no reason to doubt that this is
23 actually an accurate portrayal of Darwin s theory, because
24 Darwin s theory is a theory, there is a significant amount
25 of evidence that supports the theory, although it is still

1 being tested as new evidence is discovered. You had no
2 reason to believe that this wasn't an accurate statement of
3 Darwin's theory of evolution?

4 A Correct.

5 Q But you removed this language, right?

6 A Yes.

7 Q And you did that because that's -- because the
8 board didn't want language like that, right?

9 A Well, the -- actually, the board only had my copy,
10 and this was now the board's edit and the teachers' edit
11 that I'm combining, so I don't think the board ever saw that
12 language. But from my meeting with the board previously
13 where they struck out "dominant scientific explanation," I
14 didn't think they would be supportive of that language, so I
15 took it upon myself to delete that language.

16 Q Because you thought that reflected the board's
17 views?

18 A Yes.

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

20 THE COURT: You may.

21 BY MR. ROTHSCHILD:

22 Q Mr. Baksa, I've shown you two exhibits, the first
23 is defendant's exhibit 96. And do you recognize that as a
24 handwritten note -- handwritten notes of a conversation you
25 had with Mr. Buckingham?

1 A Yes.

2 Q And what he's doing there is suggesting language
3 about the intelligent design aspect of the statement,
4 correct?

5 A Yes.

6 Q And it says, "In an effort to gain an understanding
7 of what intelligent design actually involves" -- I think
8 that's an addition to the previous sentence about *Pandas*,
9 and then, "As is true with any theory, you are encouraged to
10 keep an open mind." Correct?

11 A Yes.

12 Q And then if you look at defendant's exhibit 97,
13 that language is in fact added to this draft version, right?

14 A Yes.

15 Q And that language became a part of the final
16 version?

17 A Yes.

18 Q And then if you go above that in defendant's
19 exhibit 97, you see there's a strike of the word "yet."
20 Correct?

21 A Yes.

22 Q Your draft, the one you prepared and that the
23 teachers reviewed, said, "Gaps in the theory exist for which
24 there is yet no evidence." Correct?

25 A Yes.

1 Q But the final version just says, "Gaps in the
2 theory exist for which there is no evidence." Correct?
3 A Yes.
4 Q And when you struck that language, that was, again,
5 doing the will of the board members, correct?
6 A Yes.
7 Q Mr. Buckingham s will?
8 A Yes.
9 Q And you would agree with me that, again, that
10 change in the sentence conveys two very different things to
11 students, right?
12 A Yes.
13 Q Because your version actually says, hey, you know,
14 there s certain things we don t know, there s yet no
15 evidence, it may come, right?
16 A Yes.
17 Q But the language as it reads in the final version
18 just says there s no evidence, right?
19 A Correct.
20 Q So to summarize, the board took out language
21 proposed by the administration and by the science faculty
22 that would suggest that the theory of evolution is a sound
23 theory; would you agree?
24 A I agree that the board took out language that I
25 think my understanding is that they felt, and one of their

1 main concerns was they felt that the Darwin s theory was
2 being overstated in the text. And my understanding is that
3 language in this statement, they were again concerned about
4 maybe the same issue, not overstating Darwin s theory.
5 Q You didn t feel that way about the statement that
6 you and Mrs. Miller developed? You didn t feel like it was
7 overstating it?
8 A No, I agreed with the original language that I
9 proposed.
10 Q And also with Mrs. Miller s suggestion?
11 A Yes.
12 Q And obviously the teachers felt better about this
13 language, about the theory of evolution, than what they
14 ended up with, right?
15 A Well, I don t know that, but certainly some of
16 their suggestions weren t included.
17 Q And what was left was the language that is pretty
18 negative about the theory of evolution.
19 A Well, I wouldn t characterize it as negative.
20 Q There s gaps, right? Theory not a fact?
21 A There s gaps in Miller and Levine s textbook.
22 Q Right, but it s only -- and I m not suggesting
23 there aren t gaps, but it s only the things in the draft
24 statement that were negative about evolution, not positive
25 about evolution. That s how it ended out, right?

1 A I don t see it that way -- I mean. I don t see it
2 that way. I see that the edits that were done by the board
3 or the absence of some of the language that the teachers
4 wanted included, that that language would have been stronger
5 in support of Darwin s evolution, and the language that was
6 ultimately adopted isn t as strong, but I don t see it as
7 negative.

8 Q In any event, from the teachers perspective, the
9 end result was that language they had suggested and language
10 you had suggested that they were comfortable with, was
11 excluded from the final statement?

12 A Some, yes.

13 Q You can understand why the teachers wouldn t want
14 the public, including their students, to believe they had
15 ownership over this process?

16 A Well, if you re going back to, you know, their
17 reaction to Dr. Nilsen s press release, again, I even
18 thought that the press release was simply what was being
19 reported in the papers was that teachers weren t involved,
20 that we weren t answering any of their questions. It
21 sounded like we weren t working with them, that they had
22 nothing to do with the process. They certainly had
23 something to do with the process. Did it result in language
24 here in the statement exactly as they would have wanted it?
25 No, it didn t, you know, there were edits to it.

1 So there s involvement that way, and I don t -- I
2 didn t think the press release tried to make a point of
3 saying that the teachers had signed on fully supportive of
4 everything that happened, just that they -- they were aware
5 of what was happening.

6 Q They were aware, they made suggestions, and many of
7 their important suggestions were rejected, right?

8 A That some of their language was not included,
9 that s correct.

10 Q And in fact, it s fair to say that from the
11 perspective that they were operating from, the statement got
12 worse from the time you gave it to them, until the final
13 version?

14 A Well, again, some language that they wanted was not
15 included. I don t ever remember having a conversation at
16 the end of the day after the final language was drafted,
17 with their opinion of what finally was done. So I don t --
18 I can t answer, you know, how they felt at the end of the
19 day with the final language.

20 Q Now, you agree that students are not told that any
21 other theory taught in science class in the Dover School
22 District is a theory, not a fact, right?

23 A I m not aware of any.

24 Q And students are not told that other theories have
25 gaps, correct?

1 A I m not aware; I don t know.

2 Q Or because they re theories, they re still being
3 tested?

4 A Again, I m not aware of that, right.

5 Q And no one has ever explained to you why evolution
6 is being singled out from all of the scientific topics
7 taught to Dover students in this way?

8 A By?

9 Q Why?

10 A I said by, singled out by?

11 Q Singled out by the board and the administration,
12 why evolution is being singled out for this treatment,
13 different from all the other scientific concepts taught to
14 Dover students.

15 A Just -- I just know the concerns that were
16 expressed to me from some board members that they felt that
17 it was overstated in the textbook and they had that concern.

18 Q And nobody has explained why, you know, you know, a
19 half dozen or dozen other scientific theories that are
20 presented to Dover students aren t also -- the students
21 aren t also told them about them; it s a theory, not a fact.
22 You don t know why evolution gets that special treatment?

23 A That s correct.

24 Q And obviously there s no language in the statement
25 suggesting that there are any gaps in intelligent design,

1 right?

2 A No.

3 Q Now, further down the road, after this statement
4 was in effect, you actually warned the science teachers that
5 they could be putting themselves in a risky position by
6 standing up to the board on the issue of what is being
7 taught in biology class, correct?

8 A I had a conversation with -- a private conversation
9 with Mrs. Miller at which the teachers had been on a couple
10 forums for discussing the issue, and the implementation of
11 the new curriculum change and talking about ID. And I felt
12 that it was -- wasn t necessary for them to put themselves
13 in the middle of this. The board had made a decision. Once
14 a board makes a decision, whether you agree with that
15 decision or not, it s our responsibility to implement that
16 and not continue to publicly protest their decision.

17 Q And the reason you were telling them this is
18 because you were looking out for them, right?

19 A Well, yeah, I didn t think they needed to put
20 themselves in a risky position, correct.

21 Q And one of the things that you thought might put
22 them at risk was the position they took about not reading
23 the statement, correct?

24 A No, they were okay about that, because they had --
25 they had requested from Dr. Nilsen that they not read the

1 statement, and Dr. Nilsen granted that request. What
2 happened after that is they had agreed to distribute the
3 opt-out forms to students, and never communicated to
4 Dr. Nilsen or myself that they weren't going to do that.
5 And I explained that a legal -- were there to be given a
6 legal opinion about their actions and whether that
7 constituted insubordination or not was iffy, and that they
8 put themselves at risk by doing something like that and not
9 communicating.

10 Q But you also, I mean, you told me at your
11 deposition they were putting themselves at risk by taking
12 the position not to read the statement, right?

13 A I don't believe I said that.

14 Q Could you turn to page 98 of your March 9th
15 deposition. At line ten I asked you, "Is one of the things
16 that they had done that you thought might put them at risk,
17 does that include the position they took that they did not
18 want to read the statement?" And you answered, "Yes."
19 Correct?

20 A But if you read further, I kind of clarify that and
21 again I go back to saying, if you look at line 17, I say,
22 "Because I felt that they did not have -- it wasn't the
23 statement so much as we had come to an agreement about the
24 procedures for implementing the reading of the statement at
25 a meeting with the teachers, we reviewed how we were going

1 to do that, and they were in agreement with that. After
2 that, they submitted a request not to have to do that, and
3 the superintendent responded that he would make that
4 accommodation in this particular instance. What they failed
5 to do was on Friday they were to distribute the forms for
6 students to be excused from classes without informing
7 anybody of that. I felt that that action was risky in that
8 there was an administrative understanding for them to do so,
9 and they didn't do so. And if examined by counsel, that
10 could be determined to be an act of insubordination which
11 would put them at risk." So I think I clarified it.

12 Q Sure. But in any event you felt that, as a general
13 matter, that they needed to be careful in terms of standing
14 up to the board on the biology curriculum, correct?

15 A Yes.

16 Q And similarly, you felt that you would be putting
17 yourself in a risky position if you stood up to the board
18 about the biology curriculum, isn't that right?

19 A No.

20 MR. ROTHSCHILD: No further questions.

21 THE COURT: Redirect, Mr. Gillen?

22 MR. GILLEN: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. GILLEN:

25 Q Good morning, Mike.

1 A Good morning.

2 Q Mr. Rothschild has asked you a number of questions
3 and I want to make sure the record is clear on some of your
4 responses.

5 The first area I would like to ask you about is
6 your attendance at the seminar given at Messiah College in
7 2003. As a result of your attendance at that seminar, did
8 you learn anything about the legality of teaching
9 creationism?

10 A Just that teaching creationism would be illegal.

11 Q And did that information received at that seminar
12 shape your actions at every stage in this process that we
13 scrutinized in this litigation?

14 A Yes.

15 Q And at any point in that process did you entertain
16 an illegal objective?

17 A I m sorry?

18 Q At any point in that process did you believe that
19 you were entertaining an illegal objective?

20 A No.

21 Q Mr. Rothschild has questioned you about Allen
22 Bonsell s objections to evolutionary theory. When
23 Mr. Bonsell expressed his objections, did he accompany his
24 objection with more specific information?

25 MR. ROTHSCHILD: Objection, Your Honor. He s been

1 leading every question in this redirect.

2 MR. GILLEN: All right, let me rephrase, I suppose.

3 THE COURT: So you concede the point?

4 MR. GILLEN: I guess. I m not sure it s leading.
5 It s a preliminary.

6 THE COURT: Saving me ruling on the objection.

7 MR. GILLEN: I m eager to save you work, Judge.
8 You ll have enough soon enough.

9 BY MR. GILLEN:

10 Q Let me ask you this, Mike. In your conversations
11 with Mr. Bonsell about his objection to evolutionary theory,
12 did he give you additional information?

13 A When Mr. Bonsell was expressing his concerns to me
14 about the treatment of evolution in the text, my
15 understanding is that he also talked about having read an
16 article about -- that cast out on carbon 14 dating. He did
17 talk about seeing a video that showed an earlier, a bear
18 changing through evolution into a whale, which he thought
19 was improbable. And but just generally thought that the
20 treatment in the book portrayed it as a fact with no room
21 for any doubt whatsoever on any aspect of the theory.

22 Q How about discussions of the statistical
23 improbability of cellular life, biological life emerging?
24 Did he ever provide you with information about that?

25 A No.

1 Q Okay. Did Mr. Bonsell ever discuss with you how he
2 describes evolutionary theory to his children?

3 A No.

4 Q Did he ever explain whether he taught his children
5 about the statistical improbability of life?

6 A No.

7 Q Ever tell you how he explains to his children about
8 problems in evolutionary theory?

9 A No.

10 Q Was there ever any discussion about what he tells
11 his children about gaps in evolutionary theory?

12 A No.

13 Q I would like to ask you to look at defendant s
14 exhibit 286.

15 A Do I have that?

16 Q I believe Mr. Rothschild provided you with a copy.

17 THE COURT: If you could ask Matt to put that up on
18 the screen. It s helpful to me, if you don t mind.

19 THE WITNESS: I don t think I have that.

20 THE COURT: It should be on your screen if you can
21 see it. If not we can get you a hard copy.

22 MR. GILLEN: Thank you, Your Honor.

23 BY MR. GILLEN:

24 Q Can you see it, Mike?

25 A Yes.

1 Q You ve been asked some questions about this. I
2 want to ask you a few more. What knowledge concerning
3 creationism or the teaching of creationism did you have at
4 the time that you drafted this document?

5 A Well, I m -- at this point I had gone to Messiah,
6 and there the presenters were -- you know, did put forth
7 that thought, the discussion of other theories or other
8 explanations other than Darwin, that those made for a good
9 discussion in the classroom. And at this time I did know
10 that the teachers had been giving some explanation before
11 they started teaching evolution that they were mentioning
12 creationism.

13 Q When you drafted this document, did you believe
14 that it would require a departure from existing practice in
15 the classroom?

16 A No.

17 Q Mr. Rothschild has noted that the language of
18 exhibit 286 includes "demonstrate awareness." Was there any
19 particular reason that you used that language in this draft
20 document?

21 A Well, I remember -- I remember when looking at the
22 language of all of the other -- for instance, right above
23 "students will be able to list," and what I tried to do is
24 simply, when you write instructional objectives for students
25 you put some type of action verb in there that students will

1 list or demonstrate or identify. So I was just trying to
2 duplicate the language that you use, the verbiage you use
3 when you create an instructional objective.

4 Q Well, there s been a great deal of discussion of
5 the curriculum change that was adopted by the board on
6 October 18th. Do you see a difference between the
7 language you employed in this document and the language
8 that s incorporated in the curriculum change that was
9 actually approved by the board?

10 A Yes.

11 Q Tell us what that difference is.

12 A Well, the language simply says, "Students will be
13 made aware of," and the language "to demonstrate anything"
14 is removed.

15 Q Mr. -- now, let me ask you this, is that language
16 choice on your part related to the distinction you ve
17 addressed between teaching and making aware?

18 A Well, if you have language in there that says to
19 demonstrate, then you don t -- that language could lead you
20 to believe that students will be assessed in some way to be
21 able to demonstrate that. So students -- we weren t
22 teaching it. They weren t going to be assessed, so that
23 language wasn t necessary.

24 Q Let me ask you to look at defendant s exhibit 19,
25 and --

1 A Is that -- do I have that?

2 THE COURT: Let s put that up too, please.

3 BY MR. GILLEN:

4 Q You should, Mike, it s this.

5 A Okay. I have it.

6 MR. GILLEN: Thank you, Matt.

7 BY MR. GILLEN:

8 Q If you look down that page there, Mike, you ll see
9 a handwritten notation, "intelligent design instead of
10 creationism."

11 A Yes.

12 Q Who put that notation there?

13 A I believe I did.

14 Q And why did you do that?

15 A At this meeting we were trying to come to some
16 understanding of what would need to be done on a number of
17 our parts for Bill to move forward for approval of the
18 books. And there had been talk of creationism, and we said,
19 well, teachers had been mentioning creationism, but we ll
20 simply replace that with intelligent design instead of
21 creationism.

22 Q And when you did that, did you think this change
23 would have any impact on teacher instruction in the
24 classroom?

25 A No, I didn t think they would do anything

1 differently than they did before.

2 Q Did you think it would have any impact on what they
3 taught and assessed in the classroom?

4 A No.

5 Q Speaking of intelligent design, did you ever -- did
6 teachers ever communicate with you concerning whether they
7 were trained to teach intelligent design?

8 A Well, I remember one of their concerns was that,
9 when we were talking about the introduction of anything, is
10 that their educational background and schooling is in the
11 biological sciences and Darwin s theory of evolution, that
12 they re not schooled in any other material and especially
13 when it came down to the possibility of them having to
14 answer questions, they didn t feel that they were able to
15 answer questions about intelligent design.

16 Q At any point in this process did they give you a
17 detailed scientific criticism of intelligent design theory?

18 A No.

19 Q I would ask you to look at defendant s exhibit 20.
20 And if you direct your attention to the bottom most notation
21 underneath the strike out. I d ask you to read that, Mike,
22 since you it s your writing and you should be responsible
23 for it.

24 A Which part do you want me to read? What is --

25 Q It looks like it s "mention" to me, but I don t

1 want to put words in your mouth. Underneath the strike out
2 on defendant s exhibit 20.

3 A Oh, okay. "Mention other theories of evolution
4 including but not limited to intelligent design, mentioned
5 existence of," dot, dot, dot, I didn t complete that.

6 Q Did you put that note there?

7 A Yes.

8 Q And why did you do that?

9 A It was my understanding at the end of this meeting
10 that we were going to, that we agreed to put some language
11 into the curriculum, and I thought I remembered reading this
12 back -- this was at the very end of the meeting, and I
13 thought I remember reading this back and that everybody was
14 in agreement with that.

15 Q Was there any particular reason that you chose the
16 word "mention"?

17 A Because we weren t going to teach it, and teachers
18 were mentioning creationism already, so we were just
19 replacing that with intelligent design.

20 Q Let me ask you, there s been some discussion of the
21 comparison between the 2002 and 2004 editions of the Miller
22 and Levine, and at the time that review was conducted you
23 had some complaints about the text from Mr. Buckingham.

24 So I want to ask you, did the comparison of the
25 text influence the way you viewed Mr. Buckingham s

1 objections?

2 A Well, I guess what was interesting is, if you look
3 at all of Mr. Buckingham s original list, and when you go to
4 those pages and those sections in the new edition of Miller
5 and Levine, they actually were addressed. So some of his
6 concerns about common ancestry and gaps and problems in
7 overstating the evidence, that there was actually changes
8 made that he had identified earlier.

9 Q You were questioned about some statements that
10 Mr. Buckingham made at public meetings, and I wasn t quite
11 clear on this and wanted to make sure the record was clear.

12 Do you ever remember Mr. Buckingham making a
13 statement to the effect that the country wasn t founded on
14 evolution?

15 A No.

16 Q Do you ever remember Mr. Buckingham mentioning
17 Muslim beliefs and evolution in the same sentence?

18 A No.

19 Q Mr. Rothschild has questioned you about the
20 meetings that the teachers attended and some concessions
21 they made. I want to ask you about those meetings. When
22 the fall 2003 meeting with Mr. Bonsell broke up, how would
23 you describe the parting of the parties? Was it collegial,
24 cordial or hostile?

25 A It was very friendly.

1 Q How about the meeting in June of 2004, same
2 question, at the -- after that meeting when the parties
3 broke up, how would you describe their attitude towards one
4 another?

5 A Well, we felt we had an agreement to move forward
6 for the text, so everybody was very satisfied with the
7 results of that meeting.

8 Q Speaking of pressure, did there come a time when
9 the teachers were asked to implement the board s policy
10 adopted on October 18th, 2004?

11 A Yes.

12 Q And do you know whether they did so?

13 A They didn t want to read the statement, so we ended
14 up reading that, and they didn t want to hand out the
15 excusal forms, so we also did that then too.

16 Q So they did not feel pressure to do that so far as
17 you know?

18 MR. ROTHSCHILD: Objection, calls for speculation,
19 Your Honor.

20 MR. GILLEN: So far as he knows. He s entitled to
21 his opinion.

22 THE COURT: I ll overrule the objection, but I ll
23 clarify, if you know. Do you know?

24 THE WITNESS: Can you restate the question?

25 MR. GILLEN: I ll take the question as clarified by

1 the Judge.

2 BY MR. GILLEN:

3 Q So far as you know, if you know, did the teachers
4 feel pressured to implement the statement?

5 A No, I don t think so.

6 Q Mr. Rothschild asked you some questions about a
7 document, defendant s exhibit 35. And your testimony I
8 thought was somewhat confusing, Mike, no offense, but I want
9 to ask you, did you ever read that document?

10 A I don t believe so.

11 Q That s what I thought. Did you collect that from
12 your files for the purpose of complying with the discovery
13 request?

14 A Yes.

15 Q Mr. Rothschild asked you some questions, I believe,
16 about plaintiff s exhibit 73. This document is your
17 September 20, 2004 memo to the board curriculum committee.

18 A Okay.

19 Q And he asked you some fair questions about the
20 process whereby this document was produced. I just want to
21 make sure the record is clear on this. If you look at the
22 first page, Mike, with the Bate stamp number 28 on it, I d
23 ask you to read the description you provided beneath the re.

24 A "Attached is a recommended curriculum change for
25 biology. The changes were reviewed by the science

1 department."

2 Q And then if you would look at the attached
3 document, and I think we all agree that the proper
4 attachment is Bate stamp 29.

5 A Okay.

6 Q Looking at that, Mike, is the description of the
7 document contained in the memo true and accurate to the best
8 of your recollection?

9 A Yes, this is the language that the teachers would
10 have proposed.

11 Q So based on that description do you believe that
12 the teachers had reviewed this language in this document?

13 A Yes.

14 Q Mr. Rothschild has drawn attention to the
15 concessions that the teachers made as the curriculum policy
16 at issue was hashed out, and I want to ask you a few
17 questions about that. From your perspective as the
18 administrator, plainly someone who was in the middle, do you
19 believe that the board made concessions in this process?

20 A Well, yeah, we ended up at a far different place
21 than the board -- some board members originally intended us
22 to go.

23 Q Well, let me ask you this. You ve mentioned that
24 the administration went on record in support of either of
25 the two versions that the teachers were willing to work

1 with. Am I correct that those are the versions that are
2 Roman 11-B and Roman 11-C?

3 A Yes.

4 Q And I want to ask you now, why did you do that?
5 Was it a principled objection to intelligent design or
6 something else? What was the basis for your position?

7 A Well, in -- especially in schools, in that culture,
8 whenever you implement a change, if the change is going to
9 be successful and effective, there has to be a demonstrated
10 buy-in by those that are going to be most affected. So it s
11 absolutely critical that if the teachers are going to have
12 something that s affecting their curriculum, that they re
13 supportive of that, otherwise the chances of it being
14 implemented the way it s proposed and being successful are
15 severely diminished.

16 Q Mr. Rothschild asked you some questions about the
17 Social Studies curriculum and a book that Mr. Bonsell
18 provided. Let me ask you, did he ever ask you to implement
19 any change to the Social Studies curriculum?

20 A No.

21 Q Are you familiar with the debate over the
22 separation of church and state in legal cases?

23 A Not really.

24 Q Mr. Rothschild has questioned you about the various
25 versions of this statement and the way they were drafted

1 out. At the time that process was playing itself out, did
2 you have an understanding concerning whether the board saw
3 the statement as related to the text in its presentation of
4 evolutionary theory as designed to address some aspects of
5 the text they thought should be addressed?

6 A The statement --

7 Q Yes?

8 A -- addressing aspects of the text?

9 Q Well, what I m asking you is, you talked about
10 balance and so on in the presentation of evolutionary theory
11 in the text. Did you see the statement as related to the
12 board s view of the presentation of the evolutionary theory
13 in the Miller-Levine text?

14 MR. ROTHSCHILD: Objection, Your Honor, leading.

15 THE COURT: Not only is it leading, but I think --
16 and I understand, Mr. Gillen, you re trying to clarify
17 points in his testimony, but I think we re starting to plow
18 up areas that have pretty well been clarified.

19 Why don t you rephrase. I ll sustain the
20 objection. If you want to stay on that point, you ll have
21 to rephrase, but we ve been down this road.

22 MR. GILLEN: Well, if you believe we ve been down
23 the road, Judge, I m not going to go down there again.

24 BY MR. GILLEN:

25 Q Let me ask you, Mike, one final question then, or a

1 few. You've forthrightly given your opinion that the
2 teachers were acting to promote what they saw as the best
3 interests of the children in their judgment. And I would
4 like to ask you for your same opinion with respect to the
5 conduct of the board. Do you think the board was proceeding
6 in a like manner?

7 A Yes.

8 Q Based upon your education and experience as an
9 administrator, do you have an understanding concerning
10 whether the board or the teachers have the final say when
11 they differ in judgment concerning whether a given
12 curriculum policy is in the best interest of the children?

13 A Yes.

14 Q What is your understanding?

15 A The board has the final say when it comes to
16 curriculum.

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

19 THE COURT: Thank you, Mr. Gillen. Recross by
20 Mr. Rothschild.

21 MR. ROTHSCHILD: Very brief, Your Honor.

22 RE-CROSS EXAMINATION

23 BY MR. ROTHSCHILD:

24 Q Mr. Baksa, did you meet with counsel last night to
25 discuss the testimony you had given in prior days or to

1 discuss the testimony you would give today?

2 A Yes.

3 Q For how long did you meet?

4 A We met over dinner.

5 Q And did you discuss the testimony you had rendered
6 over the prior days?

7 MR. GILLEN: Objection, Your Honor. I don't -- he
8 can say whether we meet, he can't ask how long --

9 THE COURT: That's a yes or no question. You may
10 answer the question. The objection is overruled to the
11 extent that the witness can answer yes or no.

12 The objection, so you understand, Mr. Baksa, went
13 to what was the substance of your discussion. But you may
14 answer yes or no whether you discussed your testimony with
15 Mr. Gillen.

16 THE WITNESS: From yesterday?

17 MR. ROTHSCHILD: Yes.

18 THE WITNESS: Yes.

19 BY MR. ROTHSCHILD:

20 Q And did you discuss the questions he would ask you
21 today on --

22 MR. GILLEN: Objection, Your Honor. He's not
23 allowed to inquire into what we talked about. And what's
24 more, it's my client, so whatever -- whatever I do to advise
25 him is legal advice.

1 MR. ROTHSCHILD: Your Honor, again, it is a yes/no
2 question. And furthermore, it is my view that it is what is
3 improper to meet with Mr. Baksa while he was on cross, just
4 as it was improper to meet with Mr. Bonsell after his cross
5 was concluded.

6 THE COURT: Well, you've made that point. I
7 understand that point, and that's for me to do with what I
8 need to do with. But setting that on the side burner for
9 the moment, the issue of whether they discussed his
10 questions today may traipse over into the privilege.

11 MR. ROTHSCHILD: I think a yes/no answer to that
12 question does not, Your Honor. That would be my position.

13 THE COURT: No, I'm going to sustain the objection,
14 but I note your point.

15 BY MR. ROTHSCHILD:

16 Q Mr. Baksa, Mr. Gillen -- you testified under
17 Mr. Gillen's redirect that the end result on what the policy
18 would be was a far different place than some board members
19 intended to go. What board members were you referring to
20 when you made that statement?

21 A Well, when you look at what was originally
22 proposed, Mr. Bonsell had mentioned, you know, a fifty-fifty
23 split, side by side, time for time with evolution; that
24 didn't happen. Our teachers taught evolution and nothing
25 else at the end of the day.

1 Mr. Buckingham wanted the *Pandas*, side by side with
2 Miller-Levine, and for teachers to be teaching out of both;
3 that didn't happen, the book ended up in the library. So --
4 and the board wanted initially a discussion, we would
5 mention other theories and there would be a discussion and
6 then we'd get onto teaching. Well, at the end of the day we
7 drafted a statement that did not allow for any discussion or
8 any questions. So that looks very different than what some
9 of the board members intended earlier on.

10 Q And Mr. Buckingham, in June, also mentioned having
11 a textbook with creationism in it, correct?

12 A I remember him mentioning creationism at the board
13 meeting in response to Mrs. Callahan's questioning why we
14 don't have a textbook. I don't specifically remember
15 that -- I mean, I don't remember the context other than him
16 saying that.

17 Q Now, you have testified that it was your
18 understanding that science teachers mention -- their prior
19 practice had mentioned creationism, right?

20 A Yes.

21 Q Now, you never thought that they were mentioning or
22 presenting creationism as a scientific proposition, did you?

23 A Well, I don't think I had any understanding other
24 than they were mentioning that to accommodate possibly the
25 beliefs of their students and to explain to them what they

1 would be teaching, what they wouldn't be teaching.

2 Q They would be teaching the scientific theory of
3 evolution.

4 A Correct.

5 Q They would not be teaching creationism.

6 A Correct.

7 Q And they were not presenting creationism as a
8 scientific theory, correct?

9 A That I don't know.

10 Q Well, if you heard that they were presenting
11 creationism as a scientific theory, you knew from attending
12 Messiah College that that would be illegal, right?

13 A I knew that teaching creationism would be illegal,
14 but the -- you know, all the information that I ever got
15 from teachers was that they did mention it. What they said
16 about it or -- I just don't have that information.

17 Q No reason to believe that they were presenting it
18 as a scientific theory.

19 A Okay.

20 Q Do you agree with that?

21 A Well, again, I don't -- I don't have any other
22 information than that they said that they did mention it.

23 Q Fair enough. And it is clear to you that
24 intelligent design is being presented as a scientific theory
25 to the students of Dover, correct?

1 A I don't know how the students would -- you know,
2 the language talks about an explanation other than Darwin's.
3 I'd have to go back and look at the statement language, but
4 I don't think the statement language goes as far as to say
5 intelligent design is another scientific theory. So what
6 the students' understanding would be after the statement is
7 read, I wouldn't know that.

8 Q Now, the board sent a newsletter to the entire
9 community of Dover, correct?

10 A Yes.

11 Q And it communicates to the community of Dover,
12 including the parents of these school children, what's going
13 on at Dover regarding this -- the teaching of evolution and
14 the presentation of intelligent design, correct?

15 A Yes.

16 Q And in that document the board is very clear,
17 intelligent design is a scientific theory, correct?

18 A Just from the documents that have been displayed
19 during the trial here, I think I remember you pointing out
20 that it says intelligent design is a scientific theory in
21 that document.

22 Q You understand that to be correct?

23 A Yes.

24 MR. ROTHSCHILD: No further questions, Your Honor.

25 THE COURT: All right, Mr. Baksa, I just have a

1 couple questions before we have you step down and end this
2 interesting, but I m sure unwelcome, interlude in your life.

3 My questions are these -- Matt, if I could ask you
4 to put up 286 again, please, which is the curriculum
5 from 03. I think -- I assume that s D-286.

6 Thank you.

EXAMINATION

7
8 BY THE COURT:

9 Q I m a little unclear, and if you answered this,
10 Mr. Baksa, I m sorry, I just didn t get it, but I m a little
11 unclear as to your recollection as to when you -- and I know
12 you may not know precisely, but when did you develop that?

13 A I found the document, it was not dated, but when I
14 found it there were papers with this document dated August
15 of 2003.

16 Q All right. And tell me again what your best
17 recollection is of the development of that.

18 A Well, I didn t remember it, developing it.

19 Q No, I recognize that, and I recognize you found it
20 in your papers. But having found it, your recollection of
21 developing it, if any, is what?

22 A Well, if I would have developed this, as I ve said
23 before, I would have developed this thinking that I might
24 need to use language like this to address a concern of a
25 board member.

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1 Q So your best guess is August of 03 --

2 A Yes.

3 Q -- based on papers that surrounded this in the
4 file?

5 A Yes.

6 THE COURT: All right. And if you could put up
7 D-19, please.

8 BY THE COURT:

9 Q There is a notation on this that I don t think you
10 were asked about, and I presume it s your writing, but I
11 want to ask you. If you would highlight for me what appears
12 to be, on the left side it says, "no mural ever again," if
13 I m reading that correctly. Is that your handwriting?

14 A Yes.

15 Q What does that mean?

16 A These were some of the concessions that we were
17 agreeing to, to move forward to purchase Miller-Levine. And
18 Mr. Buckingham did not ever want to see a mural that
19 depicted -- that was in the science class and was removed,
20 he didn t want to see a mural like that ever again in the
21 classroom.

22 Q So it was a concession that you were extracting
23 from whom?

24 A That s Bill saying he didn t want to ever see a
25 mural like that again. And --

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1 Q Saying that to who?

2 A The science teachers. And then as a result of
3 that, Mrs. Brown was going to develop language -- language
4 in our gift policy that made sure that anything displayed in
5 the classroom aligned to the content.

6 Q So the quid pro quo or the exchange, if you will,
7 or an exchange for using the Miller and Levine textbook was
8 that there would never be a mural of the type that depicted
9 evolution portrayed again?

10 A Yes.

11 Q And was that agreed to?

12 A Yes.

13 Q And, again, in exchange for the book?

14 A Yes.

15 Q If I understand your testimony --

16 THE COURT: You can take this down. Thank you.

17 BY THE COURT:

18 Q If I understand your testimony correctly, around
19 October 19th of 2004, Mr. Bonsell gave to you and others
20 the book, the *Myth of Separation*, is that correct?

21 A October 19th when?

22 Q I picked up that date from something in the
23 testimony, and I m not sure where I got it, but is that
24 approximately the time that you received a copy of the *Myth*
25 *of Separation*?

1 A I believe I received it my first year. So I
2 started in 2002-2003, and sometime during that period, it
3 might have been fall or spring.

4 Q Of?

5 A 2002-2003.

6 Q From Mr. Bonsell?

7 A I received that book then.

8 Q Was it later distributed to a wider group of
9 people? I m not sure why I have the date of October 19,
10 2004. Was it given -- was it distributed more widely in
11 2004?

12 MR. ROTHSCHILD: Your Honor, if I could be a little
13 bit of help. That was the e-mail exchange between Mr.
14 Neal --

15 THE COURT: Thank you, I combined the two. That s
16 why I have that date. I apologize for that. So let me then
17 clarify, because obviously I was confused.

18 BY THE COURT:

19 Q Tell me when, again, because I m unclear, and I m
20 sorry to have you repeat this, but tell me when you believe
21 you got that book, the *Myth of Separation*?

22 A I believe I probably got it in the fall of 2002.

23 Q From Mr. Bonsell?

24 A Yes.

25 Q To repeat.

1 And if I understood your testimony correctly, you
2 were aware that it was distributed -- that copies or a copy
3 was distributed to someone else?

4 A What I know is that I had a copy. I don't believe
5 I gave my copy to anyone. But Mr. Hoover, Doug Hoover is
6 another Social Studies teacher, and I do know from talking
7 to him that he had read it. Whether --

8 Q And that's what your note references in '04, if I
9 understand it correctly?

10 A Yes.

11 Q But were other board members, to your knowledge,
12 given a copy of that book?

13 A That I don't know.

14 Q You don't know that.

15 When you were given the book by Mr. Bonsell, do you
16 remember the circumstances?

17 A Well, I believe I got it from Dr. Nilsen.

18 Q Dr. Nilsen, I'm sorry. And I do recall you now
19 saying that, who had been given it by Mr. Bonsell.

20 When Dr. Nilsen gave it to you, was it with any
21 instructions, if you can recall?

22 A I don't remember, just that this is an area
23 Mr. Bonsell is interested in, I might want to take a look at
24 it.

25 THE COURT: All right. Thank you, Mr. Baksa. I'll

1 give counsel the opportunity to ask brief follow-up based on
2 the Court's questions. Your witness, Mr. Gillen, you go
3 first.

4 MR. GILLEN: Thank you, Your Honor.

REDIRECT EXAMINATION

5 BY MR. GILLEN:

6 Q Just one question, Mike. That was 2002, we're in
7 2005, just want to make it clear. Has Mr. Bonsell ever
8 insisted that any faculty read that book for the purpose of
9 a curriculum change?
10

11 A Not that I know of.

12 MR. GILLEN: No further question.

13 MR. ROTHSCHILD: No questions.

14 THE COURT: All right. Thank you, you may step
15 down, sir.

16 We have a great number of exhibits. Let's take
17 those before we take a morning break. All right, I have --
18 you both ready to go through this?

19 MR. GILLEN: Give me a minute, Your Honor.

20 MR. ROTHSCHILD: Your Honor, would it make sense to
21 confer over lunch about exhibits and maybe we can --

22 THE COURT: That's fine. As I look at it, I'm
23 thinking the same thing, because we're going to impede our
24 ability to continue to take testimony.

25 Why don't we take a 15 minute break at this point,

1 and then you ve got your next witness ready to go after
2 that. Do you think we can get that witness on and off by
3 lunch?

4 MR. GILLEN: I do, Your Honor.

5 THE COURT: Why don t we try to do that, and then
6 we can start with your expert hopefully right after lunch.
7 All right, we ll be in recess for 15 minutes.

8 THE DEPUTY CLERK: All rise.

9 (Whereupon, a recess was taken from 10:39
10 a.m. to 10:58 a.m.)

11 THE COURT: All right, we ll take the next witness
12 by the defense.

13 MR. GILLEN: Thank you, Your Honor. The defense
14 calls Robert Linker.

15 ROBERT LINKER,
16 called as a witness on behalf of the defendants, having been
17 duly sworn or affirmed according to law, testified as
18 follows:

19 THE DEPUTY CLERK: If you can state your name and
20 spell your name for the record.

21 THE WITNESS: Robert Linker. R-O-B-E-R-T, middle
22 initial S, L-I-N-K-E-R.

23 MR. GILLEN: Your Honor, I would request permission
24 to lead the witness with respect to preliminary matters for
25 the purpose of establishing that his interests are adverse

1 such that leading questions are appropriate.

2 MR. WALCZAK: We re going to object to him taking
3 Mr. Linger as adverse. We don t object to him doing some
4 preliminary inquiry on that.

5 MR. GILLEN: Perhaps more background, Your Honor?

6 THE COURT: Yeah, because I m inclined to allow
7 leading, given the time constraints we have. But your
8 objection goes to calling him as an adverse witness?

9 MR. WALCZAK: He -- under Rule 611(c), Your Honor,
10 I don t believe that he fits the definition of an adverse or
11 a hostile witness in this case. I mean he is actually
12 employed by the defendants in this case.

13 THE COURT: All right. Why don t you elaborate,
14 Mr. Gillen?

15 MR. GILLEN: Certainly, Your Honor. Mr. Linker is
16 a teacher. He is indeed employed by Dover Area School
17 District. As an employee of the school district he has a
18 contractual duty to implement the policies that are enacted
19 by the board.

20 In this case he and his colleagues in the science
21 department have failed to do so. They have refused to read
22 the statement called for by the curriculum policy. They
23 have refused to distribute letters and the opt-out form,
24 which they were required to distribute in connection with
25 the implementation of the policy by the administration.

1 They have retained counsel to represent them in their
2 discussions with the administration due to threats or fear
3 of liability both to third parties and from the district in
4 connection with the implementation of this policy. Under
5 those circumstances, Your Honor, I fail to see how he cannot
6 be deemed adverse.

7 MR. WALCZAK: Your Honor, the hiring of counsel by
8 the teachers is true. The same limitations that was put on
9 the defense has been put on plaintiffs counsel. I have
10 never met Mr. Linker. I ve never spoken to Mr. Linker
11 before today. I was introduced shortly before the trial.
12 Clearly not an adverse party as that term is used under
13 611(c).

14 MR. GILLEN: Not so.

15 THE COURT: Well, wait, that s in the -- that s in
16 the disjunctive. He doesn t have to be adverse. He can be
17 hostile. He could be a witness identified with an adverse
18 party.

19 MR. GILLEN: Precisely, Your Honor. And the
20 teachers have cooperated with the plaintiffs in a number of
21 matters. They ve met with them.

22 THE COURT: Let me ask you, what s the harm?

23 MR. WALCZAK: Your Honor, I m not sure where he s
24 going with that, but part of the --

25 THE COURT: Well, here s what we re going to do.

1 I m going to let him lead for the apparently narrow purposes
2 as it relates to the implementation of the policy, because
3 we re going to move along here. I ll hear your objections,
4 though, and -- but I will allow the leading questions -- let
5 me ask you this. Are you indicating that the witness was
6 not disclosed?

7 MR. WALCZAK: No, the witness was disclosed. It
8 was not disclosed to us until this morning when we walked
9 into court that they were going to call him as if on cross.

10 I mean I did not meet with Mr. Linker. Had I known
11 that they were going to call him as if on cross we might
12 have prepared this case differently. The other point I
13 would just like to make in terms of -- I think it s clear
14 that certainly that three part test under the last sentence
15 of 611(c) is in the disjunctive. He -- and clearly it s not
16 an adverse party or witness identified with an adverse
17 party. The question is whether he s a hostile. He was
18 deposed, Your Honor, in this case.

19 THE COURT: The hostile witness is a judgment I ve
20 got to make, and I don t know, and that s why I say, let s
21 defer, and if it appears that he s not, I ll hear a renewed
22 objection. But let s keep moving.

23 MR. WALCZAK: Just note my objection.

24 THE COURT: I note your objection. We ll overrule
25 your objection at this time. You may renew your objection

1 if circumstances warrant during the examination. And
2 Mr. Gillen, you may proceed.

3 MR. GILLEN: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. GILLEN:

6 Q Mr. Linker, I just want to establish a few facts
7 here as we get started. You are an employee of Dover Area
8 School District?

9 A Correct.

10 Q As an employee you have a contractual duty to
11 implement the policies of the school district?

12 A Correct.

13 Q In this case you have refused to implement the
14 curriculum change enacted by the board on October 18, 2004,
15 correct?

16 A Correct.

17 Q You have refused to read the statement called for
18 by the curriculum policy, correct?

19 A Correct.

20 Q You have refused to distribute letters and opt-out
21 forms that the administration called for to be distributed
22 in connection with the implementation of the curriculum
23 policy, correct?

24 A Correct.

25 Q You have retained counsel to represent you in

1 connection with this matter?

2 A Correct.

3 Q You have retained that counsel to represent you,
4 vis-a-vis the administration and school board?

5 A Correct.

6 Q And you have retained counsel to represent you here
7 in connection with your testimony in this case, correct?

8 A Correct.

9 Q Mr. Linker, you attended a board meeting in the
10 fall of 2003 with Alan Bonsell which pertained to the
11 presentation of evolutionary theory in schools at Dover?

12 A It wasn't a board meeting.

13 Q A board curriculum committee meeting?

14 A In -- in an actual room.

15 Q Yes.

16 A Correct.

17 Q And during that meeting you described how you
18 presented evolutionary theory to the students.

19 A Actually Jenn Miller was our spokesmen for that.

20 Q Jenn -- Jenn did do some description, but so did
21 you, correct?

22 MR. WALCZAK: Your Honor, I am going to renew my
23 objection to leading questions here.

24 THE COURT: Overruled at this time.

25 BY MR. GILLEN:

1 Q Mrs. Miller did do the bulk of the talking, but so
2 did you, Mr. Miller -- I mean Mr. Linker, correct?

3 A At that meeting I was asked if I taught it the same
4 way, and I said yes.

5 Q Okay. And you also provided some information about
6 how you present evolutionary theory, correct?

7 A Not at that particular meeting.

8 Q Well, did you indicate that you presented
9 evolutionary theory in a manner similar to Jenn Miller?

10 A Yes.

11 Q You described how you started out teaching
12 evolutionary theory, you took the chalkboard and you drew a
13 line down the middle, correct?

14 A Not at this meeting. The meeting that I drew the
15 line down, that was with Mr. Baksa. Mr. Bonsell was not
16 present at that one.

17 Q Okay.

18 MR. GILLEN: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. GILLEN: Thank you.

21 MR. ROTHSCHILD: Your Honor, for the record,
22 Mr. Linker's counsel is going to join us at counsel table.

23 THE COURT: All right. I was going to mention
24 that, and I think that's a good idea. Why don't you enter
25 your appearance for the record.

1 MS. PENNY: Thank you, Your Honor. My name is Jane
2 Penny. I'm from the law firm of Killian and Gephart.

3 THE COURT: All right, nice to see you. We'll note
4 your appearance and allow you to interject any objections or
5 comments on the record that you want to.

6 MS. PENNY: Thank you, Your Honor.

7 THE COURT: Proceed.

8 MR. GILLEN: Thank you, Your Honor.

9 BY MR. GILLEN:

10 Q Mr. Linker, I would ask you to direct your
11 attention to page 17 of your deposition, line 21. As a
12 preliminary matter I'd ask you, do you recall that I took
13 your deposition on June 10th, 2005?

14 A Page 17?

15 Q Yes, line 21.

16 A Okay.

17 Q Okay. And before we go further, Mr. Linker, I
18 would ask you, do you remember that I took your deposition
19 on June 10th, 2005?

20 A Yes.

21 Q And prior -- as the deposition began you were
22 placed under oath?

23 A Correct.

24 Q Do you recall that? And you had a duty to tell the
25 truth, correct?

1 A Correct.

2 Q And you understood that?

3 A Yes.

4 Q And you did so?

5 A Yes.

6 Q Okay. I d ask you to look at line 21. And you ll

7 see there is a question there, "How about, let s look at the

8 fall of 2003; do you remember a meeting with Mr. Bonsell."

9 Do you remember your answer?

10 A Yes.

11 Q And there you indicate that the meeting did occur,

12 correct?

13 A Correct.

14 Q And is that the meeting in which you described how

15 you taught evolutionary theory?

16 A That was the meeting with Mr. Bonsell. That was

17 the meeting that Jenn was our -- Jenn Miller was our

18 spokesperson. And how I taught evolutionary theory, more

19 specifically was with Mr. Baksa.

20 Q Okay. I d ask you to direct your attention to

21 line -- page 19, line 17. If you look at line 14 you ll see

22 I asked you this question. "I remember more so the meeting

23 that Mr. Bonsell -- like the people sitting around and I can

24 believe." That was your answer, correct?

25 A Correct.

1 Q If you look beneath that I asked you a question,

2 "Tell me what you can, in brief, about what you told

3 Mr. Baksa, about the way you presented evolutionary theory."

4 And you continued to answer.

5 Isn t that with reference to the meeting with

6 Mr. Bonsell?

7 A I didn t -- the meeting with Mr. Bonsell I did not

8 tell anything about dividing the chalkboard.

9 Q Okay, then let s talk about the meeting with

10 Mr. Baksa.

11 During that meeting you told Mr. Baksa that at the

12 beginning of your presentation of evolutionary theory you

13 drew a line down the middle of the board, correct?

14 A Correct.

15 Q And you wrote evolution on one side, correct?

16 A Correct.

17 Q On the other side you wrote creationism, correct?

18 A Correct.

19 Q And you started out saying that creationism was

20 based on religion and writings in the Bible, correct?

21 A Correct.

22 Q And you said you were not going to talk about

23 creationism because you were not an expert in it, correct?

24 A Correct.

25 Q You said your training was on the other side of the

1 board, in science, correct?

2 A Correct.

3 Q You said on this side were facts based on science,
4 the fossil record, DNA and the like, correct?

5 A Correct.

6 Q The teachers at Dover never taught origins of life,
7 correct?

8 A Correct.

9 Q And Bert Spahr was at this meeting with
10 Mr. Bonsell, correct?

11 A Correct.

12 Q And she brought a stack of legal papers relating to
13 the discussion with Mr. Bonsell?

14 A Correct.

15 Q And those related to the presentation of
16 evolutionary theory, correct?

17 A Yes.

18 Q And the presentation of creationism, correct?

19 A Correct.

20 Q During the meeting with Mr. Bonsell he did not
21 criticize your teaching method?

22 A No.

23 Q When you left the meeting you felt that his
24 concerns had been addressed?

25 A Correct.

1 Q You felt that nothing would result from the
2 meeting?

3 A Correct.

4 Q From the end of 2003, from that meeting, in the
5 fall, through the end of 2003, you had no discussions with
6 anyone in the administration about the presentation of
7 evolutionary theory, correct?

8 A Correct.

9 Q Later on, around June of 2004, you remember being
10 asked to review a video, correct?

11 A Yes.

12 Q And you believe Mr. Baksa provided that video to
13 you?

14 A Correct.

15 Q Personally you wanted to watch the video because it
16 talked about gaps in the theory of evolution with many
17 prominent scientists, correct?

18 A Correct.

19 Q It went through all the gaps in evolutionary theory
20 as you knew them, correct?

21 A That was the, truthfully, it was the first time I
22 saw a lot of gaps.

23 Q Okay. Some of the gaps were gaps you actually
24 taught about, correct?

25 A I never taught gaps, but the gaps that they talked

1 about were the topics that I taught in class.

2 Q Okay. And you thought it was neat to get the other
3 side of the story when you viewed this video, correct?

4 A Correct.

5 Q You left -- you left speaking to your colleagues
6 and indicating that the video was good?

7 A Correct.

8 Q With reference to the curriculum change, when we
9 speak about the note that says origins of life are not
10 taught, you knew that the teachers didn't teach origins of
11 life, correct?

12 A Correct.

13 Q You recognize that intelligent design addressed the
14 origins of life, such that the note would prohibit the
15 teaching of intelligent design, correct?

16 A Correct.

17 Q When the curriculum change was being voted on, your
18 thought was that you would spend zero days teaching
19 intelligent design, correct?

20 A Correct.

21 Q You recognized you weren't an expert on intelligent
22 design, so you believed you couldn't teach it, correct?

23 A Correct.

24 Q You had a concern about being sued by a parent,
25 correct?

1 A Correct.

2 Q You asked the administration, the teachers --
3 including you, the teachers including you, asked the
4 administration to tell them what they were supposed to do
5 about implementation of the curriculum change, correct?

6 A Correct.

7 Q When you drew that line down the middle of the
8 board and put creationism, and you mentioned that to
9 students, did you know that creationism, teaching
10 creationism, was against the law?

11 A Correct.

12 Q Did you believe that you were doing something
13 illegal?

14 A No.

15 MR. GILLEN: No further questions, Your Honor.

16 THE COURT: All right. Thank you, Mr. Gillen.
17 Mr. Walczak.

CROSS EXAMINATION

18
19 BY MR. WALCZAK:

20 Q Good morning, Mr. Linker.

21 A Good morning.

22 Q You've been teaching biology at Dover Area School
23 District for a long time now?

24 A Correct.

25 Q How long have you been teaching?

1 A This is my twelfth year.
2 Q And you ve been teaching evolution as part of that
3 biology?
4 A Correct.
5 Q And you have taught for many years now with Jenn
6 Miller?
7 A Correct.
8 Q Rob Eshbach?
9 A Yes.
10 Q Now, prior to the fall of 2003, had any
11 administrator, any Dover Area School District administrator,
12 questioned you about how you teach evolution?
13 A No.
14 Q Had any board member ever questioned you about how
15 you teach or present evolution?
16 A No.
17 Q Had any board member or administrator questioned
18 you about how you teach anything in biology?
19 A No.
20 Q Had you ever met with a board member prior to the
21 fall of 2003?
22 A No.
23 Q Now, besides being a biology teacher, are you
24 involved in other activities with the school district?
25 A Yes, I m the head wrestling coach.

1 Q Are you involved in other athletic endeavors or
2 coaching endeavors in the township?
3 A Yeah, I volunteer for football for littler kids.
4 Q So is it fair to say that you don t spend all of
5 your time thinking about or teaching biology?
6 A Correct.
7 Q Now, I want to turn to the fall of 2003, and I want
8 to clarify just a little bit about the chronology of what
9 happened at that time. Now, you had two meetings about
10 evolution that fall?
11 A Correct.
12 Q And one of them was with Mr. Baksa?
13 A Correct.
14 Q And another one was with Mr. Baksa and Mr. Bonsell?
15 A And a lot of other people.
16 Q Let s take the one with Mr. Baksa first. Do you
17 remember when that meeting occurred?
18 A No, I m not real good on dates.
19 Q Well -- and I can appreciate that, because I have
20 exactly the same problem. Let s see if we can narrow it
21 down. Was it while school was in session?
22 A Yes.
23 Q So was it before wrestling started?
24 A I m saying yes because I was available.
25 Q So September or October of 2003?

1 A Yes.

2 Q And how did you find out about this meeting, do you
3 remember?

4 A Almost all meetings, it was either e-mailed to me
5 or my department head would tell us we have to have a
6 meeting, or -- I m not sure in this meeting, it could have
7 been an in-service day.

8 Q So you don t remember how -- do you remember going
9 into the meeting whether you knew what the purpose of the
10 meeting was?

11 A I can t remember that.

12 Q And do you remember where the meeting took place?

13 A Probably one of our classrooms.

14 Q And do you remember who was at the meeting?

15 A I know Jenn Miller was there, and I m pretty sure
16 my department head, Bert Spahr, was there.

17 Q And was anybody there from the administration?

18 A Just Mr. Baksa.

19 Q And there was no board members at this meeting?

20 A No.

21 Q And do you remember Mr. Baksa taking charge of the
22 meeting?

23 A Yes.

24 Q And do you remember what he was curious about or
25 him telling you why you were meeting?

1 A He just wanted to know some information on how we
2 taught the subject of evolution.

3 Q Now, biology consists of a lot of different
4 subjects, correct?

5 A Correct.

6 Q I mean, there s a lot of different theories that
7 you teach as part of biology?

8 A Correct.

9 Q And the only one he was concerned about was
10 evolution.

11 A Yes.

12 Q And what kind of questions did he ask you?

13 A He was -- just asked how we presented it. I had no
14 problem telling him.

15 Q And so did you respond -- did you tell him how you
16 presented it?

17 A Yes.

18 Q We ll come back in a little bit and talk about how
19 you presented it.

20 Did other teachers also explain how they presented
21 it?

22 A Yes.

23 Q Now, you then had a second meeting that fall with
24 Mr. Bonsell.

25 A Correct.

1 Q Do you remember in relation to this first meeting,
2 when that meeting with Mr. Bonsell was?

3 A I would say it was a short time afterwards, a week,
4 two weeks.

5 Q And do you remember how you found out about the
6 meeting?

7 A I remember this one was during the school day, so
8 that would have probably come from my department head. It
9 was during second period.

10 Q And why is it that you remember it was during the
11 school day?

12 A I have a prep period second period, and if I had
13 duty time, I would have had to get somebody to cover. I
14 remember one of the teachers, Leslie Prall, was actually in
15 class during that -- they had to get somebody to cover for
16 her.

17 Q So this meeting was so important that you were
18 pulled out of class -- your regular classroom duties?

19 A Well, it was prep period for me so --

20 Q But another teacher was actually pulled out --

21 A Yes.

22 Q And Ms. Prall is a biology teacher?

23 A Correct.

24 Q And had you gotten warning of this meeting in
25 advance?

1 A Warning for days, no. I think I got it pretty
2 quick, maybe the day before, maybe the morning.

3 Q And where was this meeting, do you remember?

4 A It was in the office, the principal s -- one of the
5 conference rooms of the principal s office.

6 Q Do you remember who was at that meeting?

7 A I know Jenn Miller was present, she was beside me;
8 Mr. Bonsell, Mr. Baksa, Mr. Rehm, Bert Spahr, Mr. Miller,
9 which was our assistant principal, he s presently our
10 assistant principal; Leslie Prall, and the only one I m not
11 sure of is Mr. Eshbach.

12 Q And who is Mr. Rehm?

13 A Mr. Rehm was a science teacher. He was the STS
14 teacher, science/technology, it was more environmental. It
15 was more on the environmental side. We still have that
16 class.

17 Q And this was the first time I think you said you
18 had ever met with a board member?

19 A Correct.

20 Q And did one individual take charge of running the
21 meeting or moderating it?

22 A Mr. Baksa pretty much introduced us and introduced
23 Mr. Bonsell. And I just remember him saying he s just
24 interested in how you teach the subject of evolution.

25 Q Do you remember him saying those words?

1 A Yes, pretty similar to that. Not exact words.

2 Q And did the teachers identify a spokesperson for
3 them that day?

4 A For the biology department we identified Jenn
5 Miller as our spokesperson.

6 Q And do you remember what kind of questions were
7 asked of Ms. Miller?

8 A By whom?

9 Q By either Mr. Baksa or Mr. Bonsell.

10 A I think Mr. Baksa just said we re going to go
11 around and you can express how you teach the subject of
12 evolution. And I remember Jenn saying well, I m going to
13 talk for the biology teachers, so it s not everybody.

14 Q And do you remember whether Mr. Bonsell asked any
15 questions?

16 A I can t remember any specific questions, but I know
17 Jenn Miller had to repeat some of what she told him, because
18 it had to do with the origin of species compared to origin
19 of life.

20 Q And can you tell us what the difference there is?

21 A Origin of life is where life came from, came about,
22 when it came about. Origin of species is how, how a species
23 becomes another species, for lots of different reasons.

24 Q And do you recall what Ms. Miller explained to
25 Mr. Bonsell?

1 A Pretty much what I just said.

2 Q And --

3 A In order --

4 Q And that was fine?

5 A Yeah, that was fine.

6 Q And did you add anything to what Ms. Miller was
7 saying or what she had told Mr. Bonsell?

8 A No. If I remember correctly, he looked at me and
9 said, he said, is that how the biology teachers teach it.
10 And I remember him looking at me and I said yes.

11 Q Do you remember saying anything else at that
12 meeting?

13 A Huh-uh.

14 Q Do you remember intelligent design coming up at
15 that meeting?

16 A No.

17 Q Do you remember creationism coming up at that
18 meeting?

19 A No.

20 Q Now I want to go over with you about how, if at
21 all, your presentation of evolution changed after these two
22 meetings, the one with Mr. Baksa, one with Mr. Bonsell.

23 So what I d first like to do is go over how you had
24 been teaching evolution at the time before these meetings.
25 Okay. Is that clear?

1 A Clear.

2 Q And as Mr. Gillen discussed with you, you
3 apparently drew a line on the chalkboard?

4 A Yes.

5 Q And in this -- is this the first thing you did when
6 you introduced the subject of evolution?

7 A Correct.

8 Q And as I understood your testimony, on one side you
9 wrote creationism, and on the other side you wrote
10 evolution?

11 A Correct.

12 Q And then what did you say about the creationism
13 side?

14 A Creationism was based on Bibles, religion, Biblical
15 writings. And I remember saying that we re not going to
16 cover this side because I m not certified, and it s illegal
17 for me to talk about that side in a public school.

18 And then I said, this is the side we re going to
19 talk about, the evolution side. And then the facts on this
20 side were things such as fossil records, DNA, and then I
21 would go into what does everybody think evolution is.

22 Q And at any time did you either tell or suggest to
23 students that creationism was a scientific theory?

24 A No, I might have said it was a theory.

25 Q Not a scientific theory?

1 A No.

2 Q And you certainly didn t teach creationism?

3 A Correct.

4 Q And beyond what you just told us about what you
5 said to the students, did you bring up creationism again in
6 the classroom?

7 A No.

8 Q And did you ever get questions from students about
9 creationism?

10 A They could have asked a question but I told them I
11 couldn t talk about it.

12 Q And that was your practice before the meeting with
13 Mr. Baksa, and then the meeting with Mr. Baksa and
14 Mr. Bonsell?

15 A Correct.

16 Q Now, after this meeting, did you stop doing this?

17 A Yes. Well, I stopped dividing the board in half
18 and writing creationism on one side.

19 Q And now, they didn t tell you to do that, right?

20 A No.

21 Q But you stopped anyway?

22 A Um-hum.

23 Q Why did you do that?

24 A I just felt there was some controversy, because I
25 had to go to two meetings, and for like the first time, tell

1 how I taught a particular subject. I didn't know if I was
2 really doing something wrong with writing that creationism
3 word on the board, so I just figured I would stick to the
4 exact book pretty much.

5 Q And before your meetings, these two meetings in the
6 fall of 2003, did you used to show a videotape as part of
7 your discussion on evolution?

8 A I've showed a lot of tapes, actually.

9 Q And do you find videotapes are an effective way to
10 teach students?

11 A Yes.

12 Q And, I mean, this is kind of the MTV generation,
13 but so you find students pay particular attention to
14 videotapes?

15 A Yes, if they're good ones.

16 Q And the tape that I believe you showed before the
17 meetings in the fall of 2003 was a Discovery Channel tape?

18 A Yes, a lot of them were Discovery Channel.

19 Q And have you found that to be a good and reliable
20 source?

21 A Yes.

22 Q And something that is accessible to the students?

23 A Correct.

24 Q And do you remember the name of the tape you
25 showed?

1 A One of them -- I show more than one. The exact
2 titles I'm not sure. Some were of common descent, fossil
3 records, others were of evolution and DNA.

4 Q Did you show one entitled *Apes to Man*?

5 A Probably, to some classes. I remember that title
6 because it's always -- somebody says *Apes to Man*, and that's
7 the controversial statement that kids think evolution is
8 right away. And it's a good tape because it shows that apes
9 are not from man.

10 Q So you did, prior to the fall of 2003, on occasion
11 show those tapes?

12 A Yes. I'm not sure if I showed that one every
13 semester or, you know, it all depended on timing too, how
14 much time.

15 Q And after these two meetings in the fall of 2003,
16 did you stop showing those tapes?

17 A Yes, I don't show any tapes on that subject
18 anymore.

19 Q You still show tapes on other subjects?

20 A Correct.

21 Q But not on evolution?

22 A No.

23 Q Now, are you aware of any other biology teachers
24 changing the way they teach evolution after these two
25 meetings?

1 A I know Jenn Miller used to do a time line, there
2 was a time line on, probably origin of species, and I don t
3 think -- she doesn t do that anymore because they used to do
4 it in the hallway.

5 Q So she would go out in the hallway and -- do you
6 know what it is she had students do?

7 A Yeah, like going on a register tape, the thin tape,
8 they would lay it all through the hallway, and because of
9 how many millions of years things, origin of species and
10 other origins, and they would actually get dates and draw
11 and write in the actual name of the species.

12 Q And one of the things I would assume that this
13 exercise did was to really emphasize how old the earth is
14 and the huge period of time over which change has occurred?

15 A Correct.

16 Q But after these meetings she stopped doing that?

17 A I -- yes, because I don t see her -- I don t know
18 if I ever asked her if she did, I just don t see her any
19 more doing it.

20 Q Now, I want to talk a little bit about the
21 curriculum change. And let me just, so I understand, you
22 were not particularly involved or involved at all in
23 discussion of the biology textbook change?

24 A Just to view some of the copies that we could get.

25 Q But at some point did you just tell Ms. Miller that

1 since you all taught the subject in a similar way, that she
2 could just sort of speak for you?

3 A Correct.

4 Q So you didn t attend a lot of the meetings that --
5 in early, mid 2004 about the biology textbook?

6 A I don t think I attended any of those.

7 Q So the -- the next time that you kind of get drawn
8 into the saga here was around the curriculum change?

9 A Correct.

10 Q And were you involved in meetings around the
11 curriculum change?

12 A Yes.

13 Q And you met with other teachers to discuss it?

14 A Yes.

15 MR. WALCZAK: Matt, could you put up P-84, please.

16 I think it s P-84-B.

17 May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. WALCZAK:

20 Q I show you what s been marked as plaintiff s
21 exhibit P-84B. And if you could turn to the second page of
22 this exhibit, Mr. Linker. Do you recognize this?

23 A Yes.

24 Q Now, the State of Pennsylvania made some changes to
25 its standards on biology a few years ago, is that right?

1 A Correct.

2 Q And was it you and Ms. Miller who were asked to
3 review this curriculum plan and make sure that it was in
4 accord with the new state standards?

5 A Pretty much had to write the whole thing.

6 Q And so you had actually rewritten the standards or
7 made some changes to them within the past few years?

8 A Yes.

9 Q Do you remember when that was?

10 A That was over a series -- maybe even more than one
11 year, because we did a lot of it during our in-service time.

12 Q Now, as you look at what s been marked as
13 plaintiff s exhibit 84B, the changes that you all had made
14 or eventually approved, were in the second column, down to
15 the second to last line, is that correct?

16 A Correct.

17 Q So that s what the science teachers had adopted,
18 and what the -- and I guess what the board had eventually
19 approved?

20 A Correct.

21 Q So the change we re talking about is that last one
22 in the second column.

23 A Yes.

24 Q Now, it reads here, "Students will be made aware of
25 gaps in Darwin s theory and of other theories of evolution."

1 Is that something that teachers wanted to add?

2 A Not necessarily. We just wanted to keep it the
3 same as it was prior to this.

4 Q So you really didn t want to add anything to the
5 curriculum here?

6 A Correct.

7 Q And so you were doing this because you were getting
8 pressure from the school board?

9 A I don t know if you want to call it pressure, but
10 they kept bringing in different papers and saying that they
11 wanted it this way.

12 Q So you were reacting to what either Mr. Baksa or
13 somebody was bringing to you?

14 A Correct.

15 Q Now, in this draft, do you recall whether this is
16 in fact the compromise that the teachers had agreed to? If
17 you look at the last paragraph in column two, does that look
18 familiar?

19 A Yes.

20 Q Now, it says, "Students will be made aware of gaps
21 in Darwin s theory." So you all had agreed to the word
22 "gaps"?

23 A Yes.

24 Q Were you teaching gaps in Darwin s theory?

25 A No.

1 Q But you weren't teaching evolution as a fact
2 anyway, right?
3 A No, I mean, there are no -- I mean --
4 Q Theories aren't facts, right?
5 A I don't use the word "fact".
6 Q And were the teachers opposed to using the word
7 "problems" in that sentence?
8 A I don't remember with the "problems," I don't
9 remember that being a big issue.
10 Q Now, I don't see the word intelligent design there.
11 Were the teachers opposed to using the word intelligent
12 design?
13 A Yes.
14 Q Was there any disagreement among the biology
15 teachers about that?
16 A No.
17 Q So there wasn't one biology teacher who said, you
18 know, wait a minute, this is an alternative theory, maybe we
19 should be teaching this?
20 A No.
21 Q I want to focus on what happened immediately after
22 October 18th, which was when the curriculum change was
23 passed by the board. Did you and your colleagues have
24 concerns about what the curriculum change meant for the
25 teachers?

1 A Yes.
2 Q And what was that concern?
3 A If it's in the curriculum, me, personally, if it's
4 in the curriculum, we should be teaching it. And there was
5 something in there that we didn't want to teach.
6 Q And at some point after October 18th, did you --
7 did the science or biology teachers have a meeting with
8 Mr. Baksa to talk about how you would address this
9 curriculum change?
10 A We had several meetings after that.
11 Q And at one of these meetings did you raise a
12 concern that you didn't know anything about ID and how you
13 should teach this?
14 A Correct.
15 Q And did Mr. Baksa, in fact, respond to you that
16 maybe we'll have to get you seminars or classes to learn
17 about ID?
18 A Yes.
19 Q And this was after the curriculum was passed,
20 right?
21 A I would say yes.
22 Q So -- so did it appear to you that the school
23 district actually was going to give you instructions so that
24 you could teach intelligent design in the classroom?
25 A At least to know what it was.

1 Q And then at some point after that the notion of
2 reading a statement came up?

3 A Correct.

4 Q But initially, right after the curriculum change
5 was made, they were trying to figure out how you were going
6 to present this in a classroom.

7 A I don't think it was ever -- we asked that
8 question, but it was never told directly to us.

9 Q I want to ask you about your understanding of
10 intelligent design. Had you ever heard the term before this
11 controversy in the fall of 2004?

12 A No.

13 Q So it's not something you had ever taught?

14 A No.

15 Q Do you know whether any of your fellow biology
16 teachers had ever taught it?

17 A No.

18 Q Do you know biology teachers in other school
19 districts?

20 A Yes.

21 Q Do you know whether any of them have ever taught
22 intelligent design?

23 A Not the ones that I've personally talked to.

24 Q When did you first learn about intelligent design,
25 do you remember?

1 A I think mine, me personally, was when I saw these
2 curriculum changes come in front of me.

3 Q Now, had you ever, prior to fall of 2004, had you
4 ever heard of the textbook *Of Pandas and People*?

5 A I think I saw that from these papers also.

6 Q And at some point did you get a chance to look at
7 *Of Pandas and People*?

8 A Yes.

9 Q And you didn't -- you weren't asked to review that
10 in the summer of 2004, were you?

11 A No.

12 Q You weren't involved in that whole textbook
13 dispute?

14 A That was summertime.

15 Q And that was just fine with you.

16 And do you remember your --

17 THE COURT: Good answer.

18 BY MR. WALCZAK:

19 Q Did you study *Pandas* when you finally got it or did
20 you just kind of skim it?

21 A I remember skimming it -- reading different parts
22 of it, not too much.

23 Q And was that your first exposure to intelligent
24 design?

25 A Yes.

1 Q And do you remember what your reaction to the book
2 was?

3 A I remember it was tough for me to read. I remember
4 reading a section one or two more times to try to get a
5 picture in my mind. And then I remember going to another
6 section of the book, and -- which I think it was the first
7 chapter, and I said well, maybe this will be a little
8 easier, and it said the origin of life. And I thought,
9 well, we don't teach that; and that's pretty much where it
10 ended.

11 Q And did you see in the book where it talked about
12 an intelligent designer or a master intellect?

13 A Yeah, that's in the first part.

14 Q And what was your reaction to that?

15 A Intelligent designer, higher power, I thought -- I
16 thought of God.

17 Q So that was your immediate reaction?

18 A Yes.

19 Q Now, when you were still in school, not as a
20 teacher but as a student, where did you get your degree at
21 college?

22 A York College undergrad.

23 Q And what was your major?

24 A Secondary Ed. Biology.

25 Q Did you take science education classes?

1 A Yes.

2 Q Did you take a school law class?

3 A School law, yes.

4 Q And did they teach about separation of church and
5 state there?

6 A I'm sure it was some part of it. They were --
7 school law was mostly court cases dealing with everything a
8 teacher could get in trouble for.

9 Q And did you think that teaching intelligent design
10 might get you in trouble?

11 A Yes.

12 Q Why is that?

13 A Because in my mind it had to do with God or
14 religion, and I knew you weren't allowed to do that in a
15 public school.

16 MR. WALCZAK: Just a few more questions here,
17 Mr. Linker.

18 Matt, if you could put up plaintiff's exhibit 121.

19 May I approach, Your Honor?

20 THE COURT: You may.

21 BY MR. WALCZAK:

22 Q Mr. Linker, I show you what's been marked as
23 plaintiff's exhibit 121. Do you recognize this document?

24 A Yes.

25 Q What is it?

1 A It s the document that we signed opting out of
2 reading the statement.

3 Q And is this a document that you reviewed before you
4 signed onto it?

5 A Yes. It was explained to us.

6 Q And were you forced to sign this in any way?

7 A No.

8 Q And so did you agree with what was contained in
9 this letter?

10 A Yes.

11 MR. WALCZAK: Matt, if you could highlight in the
12 first paragraph starting with, "this request."

13 BY MR. WALCZAK:

14 Q In the middle of that first paragraph, and let me
15 just make sure I understand, this -- this was the teachers
16 request to not read the four-paragraph statement that had
17 been developed by the board and the administration.

18 A Correct.

19 Q And in that sentence you say, "This request is
20 based upon our considered opinion that reading the statement
21 violates our responsibilities as professional educators as
22 set forth in the Code of Professional Practice," et cetera.
23 Did you believe that was true, that for you to read that
24 statement would violate your Code of Professional Ethics?

25 A Yes.

1 MR. WALCZAK: Matt, if you could highlight the next
2 paragraph there.

3 BY MR. WALCZAK:

4 Q Could you read that paragraph into the record,
5 please, Mr. Linker?

6 A "Central to teaching act and our ethical obligation
7 is the solemn responsibility to teach the truth. Section
8 235.10; number two, guides our relationships with students
9 and provides that, the public educator may not knowingly and
10 intentionally misrepresent subject matter and curriculum."

11 Q Is that something that you were also taught in
12 science education classes?

13 A If I can remember that far back, yes.

14 MR. WALCZAK: And Matt, if you could then highlight
15 the paragraph below that. And the first sentence there
16 says, "Intelligent design is not science." Do you agree
17 with that?

18 A Correct.

19 Q As you sit here today, you still believe that s
20 true?

21 A Yes.

22 Q And then the next sentence says, "Intelligent
23 design is not biology." Do you still feel that s true?

24 A Yes.

25 Q "And intelligent design is not an accepted

1 scientific theory." Do you believe that s true?

2 A Yes.

3 MR. WALCZAK: And Matt, if you could turn to the
4 next page.

5 BY MR. WALCZAK:

6 Q And Mr. Linker, if I could just ask you to read
7 that -- that first paragraph on the second page of
8 plaintiff s exhibit 121, please?

9 A "I believe that if I, as the classroom teacher,
10 read the required statement, my students will inevitably and
11 understandably believe that intelligent design is a valid
12 scientific theory, perhaps on par with the theory of
13 evolution. That is not true. To refer the students to *Of*
14 *Pandas and People*, as if it is a scientific resource,
15 breaches my ethical obligation to provide them with
16 scientific knowledge that is supported by recognized
17 scientific proof or theory."

18 Q And you agreed with that in January of 2005?

19 A Correct.

20 Q Do you agree with that today?

21 A Correct.

22 Q Do you believe that if you were required to teach
23 students in your biology class the theory of intelligent
24 design, that you would be bringing religion into the
25 classroom?

1 A Yes.

2 MR. WALCZAK: No further questions.

3 THE COURT: All right. Thank you, Mr. Walczak.

4 MR. GILLEN: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. GILLEN:

7 Q A few questions, Mr. Linker, by way of follow up.
8 We ve discussed the video that you saw in the June 2004
9 period and Mr. Walczak just asked you a little about gaps.
10 When you saw the video about gaps in evolutionary theory,
11 you knew there were gaps, correct?

12 MR. WALCZAK: Your Honor, objection. Outside the
13 scope of the cross. I did not ask him about this video.

14 MR. GILLEN: He asked him about gaps.

15 THE COURT: Well, no, your question gets into
16 what s in the video. You ll have to rephrase. It is beyond
17 the scope, so I m going to sustain the objection.

18 BY MR. GILLEN:

19 Q Mr. Linker, you were teaching students at least
20 something about gaps, correct?

21 A No.

22 Q I would ask you to look at your deposition, page
23 46, line 22.

24 Do you see that I asked a question and you gave an
25 answer. Let me read it for you, line 22. Speaking about

1 the video you say, "It went through all the gaps that we
2 actually even teach, some of it talked about."

3 Q Were there gaps you actually taught?

4 A No, that s the topics that we taught, that I taught
5 in class. The video showed gaps in the topics that I
6 taught. But I never taught gaps, and that was truthfully
7 the first time I seen someone present gaps. That s what I
8 meant by that sentence.

9 Q Well, and I accept your answer today.

10 Q But you thought it was neat to see those gaps,
11 correct?

12 A Yes.

13 Q Now, Mr. Walczak questioned you about the
14 statement, the truth of the matter is, you really don t know
15 when the statement first came up, do you?

16 A Which statement?

17 Q The statement that was read to implement the
18 biology change; you don t know when the idea of the
19 statement first came up?

20 A No.

21 Q You said that when you saw the term intelligent
22 designer, you thought it was God, correct?

23 A Correct.

24 Q That was your interpretation, correct?

25 A Yes.

1 Q You didn t read the whole book of *Pandas* to see
2 whether the book took that position, did you?

3 A No.

4 Q You ve testified to your belief that intelligent
5 design is not science, correct?

6 A Correct.

7 Q But you didn t even read the whole book of *Pandas*,
8 correct?

9 A Correct.

10 Q And you don t have a Ph.D. in science?

11 A No.

12 MR. GILLEN: No further questions, Your Honor.

RE-CROSS EXAMINATION

14 BY MR. WALCZAK:

15 Q Could you just tell us what your education
16 background is? I know you mentioned that you had, I guess
17 it was a biology education degree from York College?

18 A Yes, Secondary Ed. Biology from York College, and
19 then I have 36 graduate credits after that. It s called a
20 masters equivalency because it s not an actual program.

21 Q And what kind of courses did you take for that
22 masters equivalency?

23 A Probably three quarter of them -- three quarters of
24 them dealt with biology/environmental.

25 Q And were you taught intelligent design in any of

1 those classes?

2 A No.

3 MR. WALCZAK: No further questions.

4 THE COURT: All right, sir. That completes your
5 testimony. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Liz, do we have any exhibits?

8 THE DEPUTY CLERK: No exhibits.

9 THE COURT: It s quarter of 12. I don t know what
10 your pleasure is. I suppose we could get started, but I m
11 not so sure we shouldn t start an early -- you re going to
12 take the expert, Mr. Muise?

13 MR. MUISE: Yes, Your Honor.

14 THE COURT: We could break now, I would suggest
15 until one o clock, and then pick the expert up at
16 one o clock.

17 MR. GILLEN: That makes sense because I have to do
18 some setup and check the electronics and so forth.

19 THE COURT: That will give us a nice long afternoon
20 of expert testimony.

21 MR. MUISE: You re going to love it, I guarantee.

22 THE COURT: Forwarned is forearmed, for all of
23 those who visit this courtroom today.

24 All right. We will recess at this point until
25 1 p.m., and we will pick up the witness -- the expert

1 witness at that time. We ll be in recess until one.

2 THE DEPUTY CLERK: All rise.

3 (11:48 a.m., court adjourned.)

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