APPENDIX I

TAB P

In The Matter Of:

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Richard Nilsen
April 14, 2005

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

TAMMY KITZMILLER, et al., .
Plaintiffs . CIVIL ACTION NO. 04-CV-2688
vs. .
DOVER AREA SCHOOL DISTRICT,. (JUDGE JONES)
et al., .
Defendants .

Deposition of : RICHARD NILSEN
Taken by : Plaintiffs
Date : April 14, 2005, 10:00 a.m.
Before : Vicki L. Fox, RMR,
Reporter-Notary
Place : 200 One Keystone Plaza
North Front and Market Streets
Harrisburg, Pennsylvania

APPEARANCES:
PEPPER HAMILTON LLP
BY: THOMAS B. SCHMIDT, III, ESQUIRE
For - Plaintiffs
THOMAS MORE LAW CENTER
BY: PATRICK T. GILLEN, ESQUIRE
For - Defendants

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STIPULATION

It is hereby stipulated by and between the respective parties that sealing, certification and filing are waived; and that all objections except as to the form of the question are reserved until the time of trial.

RICHARD NILSEN, called as a witness, being duly sworn, was examined and testified, as follows:

BY MR. SCHMIDT:

Q: Good morning, Mr. Nilsen. My name is Tom Schmidt. I am an attorney with Pepper Hamilton, which is one of the groups of attorneys involved in what we call the Dover School District litigation. You might think of it as the Kitzmiller litigation.

I know you have been deposed in this case once before shortly after the Complaint was filed. I am going to do my best not to go over the same territory a second time. I'm sure there will be some overlapping. In fact, there will be some areas that I will intentionally follow up on, but I will do my best not to repeat much of that questioning.

A: Thank you very much.

Q: If you think I am not keeping my commitment on that, just holler, and I will see if I need to be reminded. I will do what I can to fix the line of questioning. That is my plan this morning.

I do have a number of documents that I will probably look at with you today. Some of them I am sure you have seen in connection with that earlier deposition, but I did my best to be efficient. We will probably look at them again.

Let me repeat very quickly the instructions that Mr. Rothschild gave you at that first deposition. The important instruction is that you not answer a question unless you are sure or you're comfortable that you understand it.

If you have any problems with a question I pose to you, please let me know, and I will do my best to fix it.

All right?

A: Thank you.

Q: I know you were very good at the first deposition at accommodating the court reporter and making all of your responses verbal so they can be transcribed. I would appreciate it if you would do so.

Finally, I have a habit of pausing right before the end of a question to see if I need to edit it or fix it. Please give me a chance to finish before you start talking so we don't overlap, and I will do my best to accommodate you in the same way. Okay?

A: Okay.

Q: Do you have any questions or comments that you would like to make before we start?

A: Not at this time, no.

Q: Have you reviewed the transcript of the deposition that was taken on January 3rd?

A: My deposition?

Q: Yes.

A: Yes, I have.

Q: Have you submitted any corrections to that deposition?

A: No, I have not.

Q: Do you have any changes to any of the testimony you gave at that time that you would like to bring to our attention?

A: No, I do not.

Q: Have you reviewed the transcripts of other depositions that have been taken in this litigation?

A: Yes, I have.

Q: Which ones?

A: Mr. Baksa's, Ms. Geesey's, Mr. Bonsell's, Alan Bonsell's. And I'm not sure, but my recollection may be also in all fairness of disclosure Mr. Buckingham's.

Q: Mr. Buckingham I think has been deposed twice. Have you reviewed both transcripts?

A: No.

Q: And when you said Mr. Bonsell and then you paused and said Alan Bonsell, did you review the transcript of Alan Bonsell's father's deposition?

A: No, that is why I clarified. I was aware there were two and wanted to make sure there was no misunderstanding.

Q: Have you reviewed the transcripts of any depositions of plaintiffs in this case?

A: No.

Q: A few more questions about the litigation and how the litigation is being handled. The defendants are the School District and the School Board.

Is it accurate to say that you are the principal contact on behalf of the District and the Board with counsel?

A: I don't understand that question. Who is contacting —

Q: You are represented by an attorney here today Mr. Gillen?

A: Yes.

Q: Who is with a firm of attorneys?

A: Yes.

Q: They represent the defendants in the litigation; is that right?

A: Yes.

Q: Are you the principal contact person for the defendants

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in the dealings between defendants and their attorneys?
A: I am not sure what your definition of principal is.
Q: Okay. Are you authorized to speak for the defendants when you speak with Mr. Gillen and the attorneys that he works with in matters involving how the litigation is being conducted?
MR. GILLEN: Object to form.
A: Only in the capacity of being specifically directed by the majority of the Board.
BY MR. SCHMIDT:
Q: I was asking the question awkwardly. I apologize. It wasn't meant to be a trick question.
You are the Superintendent of the Dover Area School District?
A: That is correct.
Q: You are its chief executive?
A: That's correct.
Q: You report directly to the Board?
A: That is correct.
Q: Your powers and responsibilities are dictated in part by state statute; is that right?
A: That is correct.
Q: And some regulations I suspect?
A: Yes.
Q: And you also have an employment contract with the Board;

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is that correct?
A: That is correct.
Q: In Mr. Baksa's deposition, which you have reviewed, there was some testimony about his work with one or both curriculum committees in 2004, work involving the selection of a new biology textbook for the ninth grade at the Dover Area High School.
Do you recall his testimony on that subject?
A: I recall parts of the testimony.
Q: Mr. Baksa testified that at some time after June, 2004, he made some inquiries about what biology textbooks were being used by parochial schools that operate near Dover; do you recall that testimony?
A: Yes.
Q: Do you recall telling Mr. Baksa that he should make those inquiries about what biology textbooks were being used by those parochial schools?
A: I do not recall that, no.
Q: Do you know anything about Mr. Baksa's making such an inquiry?
A: Yes.
Q: What do you know about it?
A: I know that he did make the inquiry based on the fact that he developed a memo that I believe is part of the submitted documents in reviewing, if recollection is

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correct, three of the districts — or I am sorry — three of the schools and which biology books they were using.
Q: What was your role in 2004 in the work of the curriculum committee's to select or recommend, rather, new textbooks in the School District?
A: My role as Superintendent were to place the book that Mr. Baksa as Director of Curriculum Instruction — to place his recommendation on the Board agenda.
Q: It sounds like your role is passive. You simply take whatever Baksa gives you and put it on the agenda without making any judgments about whether it is an appropriate recommendation; am I right about that?
A: Passive to the extent of where Mr. Baksa in his capacity makes the recommendation. In this case and in most cases, his recommendation has been put on where I have not questioned his recommendation beyond the fact that did he follow procedure. And when he communicated to me he did, it was placed on the agenda.
Q: Mr. Baksa described some of the work that he did with the curriculum committees in the summer of 2004. I believe from his testimony that this inquiry to the parochial schools followed a June meeting of the School District Board when the biology textbook issue was discussed.

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Were you at that School Board meeting?
A: Yes.
Q: Do you recall the discussion about biology textbooks in the high school?
A: I remember the discussion, the specifics. I am not sure I remember all of them.
Q: What do you remember of the discussion?
A: I remember that Mr. Buckingham had some concerns about the textbook and was interested in looking at other options.
Q: What do you recall he said about his concerns about the textbook?
A: I believe he communicated his dissatisfaction with how the Darwinian Theory of Evolution was presented in the book.
Q: Was his dissatisfaction with how the Darwinian Theory was presented, or was his dissatisfaction with the absence of any other theory being presented?
A: My only recollection is how the Darwinian Theory was presented.
Q: What did he say about his dissatisfaction?
A: He documented — and again the documentation I believe you have — of areas of concern about how evolution was being presented in the book. Beyond that, I don't recollect what was specifically stated and/or written.

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Q: Did you make any notes yourself of the discussion of the biology textbook at that June Board meeting?
A: No.
Q: Do you have a practice of making notes during Board meetings?
A: Yes.
Q: What do you do with those notes?
A: All the notes I take are actions the Board has requested me to do and/or any changes in future agenda items. Once those items have been completed, those notes are thrown out.
Q: Did you make notes of the discussion of the biology textbook at the June meeting?
A: No.
Q: Did you have any conversation with Mr. Baksa after that meeting about the actions that should follow in connection with Mr. Buckingham's concerns or any other discussion that happened at that June meeting?
A: Yes.
Q: What was that discussion with Baksa?
A: My discussion with Mr. Baksa was he had to decide what direction he was going to go with as it related to the textbook and when the textbook decision was to be made.
Q: At that time, I mean at the time of your discussion with Mr. Baksa, what did you think the directions were that

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he needed to consider?
A: I think he needed to consider answering whatever concerns Mr. Buckingham and/or any other Board member had with the present recommended book Miller and Levin Biology.
Q: I understand that. But what did you think his options were? You referred — and I am using the word options. You referred to he needed to decide what direction he was going to go in. That suggests to me that there were — there was more than one direction available to Baksa.
What did you have in mind when you had that conversation with him?
A: I don't recommend — my apologies. I don't recollect the full conversation, but obviously, there would be two. One would be to continue the conversation on the current book. Or two, look for other options that possibly anybody and everybody would be satisfied with.
Q: Did you give him any suggestions for how to find out more about other options than simply persisting with the Miller and Levin book?
A: Again, I don't remember any specific. It would not be out of character for me to tell him to call and make sure he has contacted every other district and everyone he knows of to see if there would have been another

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textbook.
Now do I remember that specific conversation? No. Would it be out of my character? Again, no.
Q: Is it possible that in that conversation you suggested that he not only contact other public school districts but that he contact parochial schools in the area?
A: It is possible I told him to contact everybody and anybody that he hadn't contacted before.
Q: When you first saw the memorandum reporting on his contacts with parochial schools, what did you do with that information?
A: Read it.
Q: Did you talk to him about it?
A: Yes, but I don't remember the conversation.
Q: Were you surprised when you got the memorandum to see that it only reported on contacts with parochial schools and didn't provide any information about contacts with other area schools?
A: No.
Q: I ask why not?
A: Because I would have assumed he would have contacted the other parochial schools beforehand.
Q: Did you mean most of the other public schools?
A: Yes, my apologies.
Q: Did you know that he actually did make those contacts?

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A: No, I don't know that as a fact.
Q: Did you suggest at any time to Mr. Baksa that he speak with any of the families that are providing home schooling in your district —
A: No.
Q: — to see what textbooks they used?
A: No.
Q: Did you make any inquiries on your own about alternative biology textbooks? That is alternatives to Miller and Levin.
A: No.
Q: What was done, if you know, with the information that Mr. Baksa collected about the books being used in parochial schools?
A: I do not know.
Q: Did you share the memorandum or that information with any Board member?
A: I have no recollection of that.
Q: Did you ask Mr. Baksa to share that information with any Board member?
A: I have no recollection of that either.
Q: I am trying to understand what happened when he developed the information. You received the information, and the sense I have is that it landed on a piece of paper, and the piece of paper landed in a

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drawer or in a file, and that no use was made of it.
A: Well —
Q: I'm trying to figure out what use was made of that information since somebody went to the trouble to collect it.
A: Well, I think that is a question that needs to be directed to Mr. Baksa being he generated information and it was his responsibility to research and make the recommendation on the textbook.
Q: Did you see at this time, which is after the June Board meeting, that the selection of a biology textbook was not just the selection of another textbook but had become a matter of primary interest to the Board, at least in terms of its curriculum responsibilities?
A: I am sorry. I don't understand the question.
Q: It was a cumbersome question. Can you remember any other debate and discussion involving the teachers, the administration and the Board on a textbook selection that has the same characteristics as what you and the District have been through since last June on the selection of a biology textbook?
A: Yes.
Q: Which textbook was that?
A: The chemistry book the prior year and the family consumer science books the prior year.

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Q: What was the controversy involving the chemistry book?
A: The financial issue, as well as the issue of whether the teachers needed the book or not.
Q: By financial, you mean the cost of the book?
A: The ability for the District to pay for a new book.
Q: I assume whether the teachers needed it or not was an aspect of that financial decision?
A: Yes.
Q: And the other book was family consumer science?
A: That is correct.
Q: What was the controversy surrounding that?
A: The controversy surrounded whether it was an identical replacement of the book that the faculty already had, and the issue of whether the Board could once again finance a textbook that the teachers already had in their possession.
Q: It strikes me that both of those controversies — and I will use that word in quotes — involved basically financial considerations, cost considerations. It appears to me that the discussions about the biology book involve its contents.
Can you think of any other situation when a book is being considered by the Board for inclusion in the curriculum when there has been this kind of attention and controversy devoted to that subject?

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A: I will clarify your question. The family consumer science book was content issue based on the fact that they thought the content was already in our curriculum and didn't see the reason to purchase another book that had the same content.
Q: Okay.
A: Not specifically along the same lines, but along the same general conversation. The District gets a donation from the county on a book pamphlet that we give to our students that has a number of agencies listed in it, and a Board member and a parent had a considerable concern on the information that was in the book, specifically dealing with comments dealing with sexual education and issues concerning specific agencies that was in there.
To the point of where we ended up sending home information prior to the students receiving the books, as well as a discussion of whether to even continue handing out the individual books.
And through my experience, not only in this district, but other districts, any time we have adopted a health curriculum, there has always been conversations zeroing in on what is and what is not taught as it relates to the curriculum.
Mr. Bonsell and I had conversations and I believe a third party, but nonetheless I believe Mr. Bonsell has

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also talked to Mr. Baksa about the health curriculum in our education dealing with abstinence.
I know Mr. Baksa is meeting next week, if not the following week, with another Board member dealing with our drug and alcohol curriculum, specifically where inhalants are being taught.
If your question is does the Board hold discussions on multiple issues with content beyond this individual issue, my experience is yes.
Q: On those issues where the Board has either demonstrated or expressed a keen interest in a decision like the distribution of a pamphlet, or the selection of a textbook, is it your practice as Mr. Baksa's supervisor and as the Superintendent of Schools to basically say we have got to pay attention to this, get it right, be sure that we do what we need to do to be giving all the information to the Board and do the best job we can?
You don't treat it as a routine matter; do you?
MR. GILLEN: I object to the form.
A: I think it is a routine matter. I think the routine matter of the Board's reviewing curriculum and making comments about curriculum is routine. Board members historically have had conversations about what is in the curriculum, and their recommendations on what should be in the curriculum, and what type of curriculum should be

placed in our planned courses. That is a routine matter.

BY MR. SCHMIDT:

Q: At the time of the June meeting in 2004, had you ever heard of the notion of Intelligent Design?

A: Not that I can remember, no.

Q: Do you remember your first contact with the Discovery Institute? And by you in this case, I am referring to you personally.

A: Me personally, yes.

Q: When did that contact take place?

A: The fall of 2004.

Q: Where did the contact take place?

A: Over the phone.

Q: Who else was involved in the telephone contact?

A: No one else.

Q: That wasn't meant to be a trick question. You were on the phone. Who else was on the phone; somebody from the Discovery Institute?

A: Yes.

Q: Do you remember who it was?

A: No, I don't.

Q: Do you know someone named Seth Cooper?

A: Yes.

Q: There is a deposition exhibit that has previously been

marked as Plaintiff 38 which I would ask you to take a look at?

A: (Witness complies.)

MR. GILLEN: Tom, I mentioned to Eric yesterday that 40, I have a problem with in that I am not sure if it wasn't inadvertently provided. I need to go back to the office and check on that.

MR. SCHMIDT: Okay.

MR. GILLEN: Thank you.

BY MR. SCHMIDT:

Q: Dr. Nilsen, have you seen this document before today?

A: I have reviewed over 2,000 documents. Does this jump out at me? No. Would I have reviewed it before? I believe so.

Q: Do you recall seeing this e-mail at about the time it was sent in June of 2004?

A: Not to my recollection, no.

Q: Were you aware in June of 2004 that Seth Cooper or anyone from the Discovery Institute was reaching out and trying to contact Mr. Bonsell?

A: Not to my recollection, no.

Q: If you would, look at the e-mail address at the top of Plaintiffs 38. Is the e-mail address for Mr. Bonsell one that is provided by the School District?

A: Yes.

Q: Is an e-mail address provided by the School District for all of its Board members?

A: Provided, yes. Accessed by all of them, no.

Q: How do you know that?

A: I have had Board members tell me that they don't want the e-mail address. In fact when we provided it to them, one Board member in specific — a prior Board member said she doesn't like the computer and doesn't want to have access in the computer and has no interest in the computer.

Other Board members have told me that they don't have time to access it and would prefer their own personal e-mail addresses as the contact. Other Board members have said they don't — even though they use the computer would prefer not to be contacted.

So we have provided it to all of the Board members, but then housed within the scope of Board members, some have chosen not to access it. Some have chosen not to have it. Some have chosen to have different e-mails.

Q: What do you know about Mr. Bonsell's use of the District provided e-mail?

A: Beyond him telling me he has had frustration accessing his own personal e-mail, nothing.

Q: Can a Board member access e-mail using that address from

a location other than the School District's office?

A: Yes.

Q: To turn that question around, so they don't have to go to the School District to access the e-mail; do they?

A: No, offsite.

Q: Did you — and I am referring again to you — hear anything from the Discovery Institute in June or July of 2004 that represented an effort to reach out to you on the subject matter addressed in Exhibit 38?

A: No.

Q: Did you know of an organization called the Discovery Institute in the summer of 2004?

A: I heard of the Institute. Whether my knowledge base was beyond the name, I can't speak to that.

Q: What did you — well, let me ask the question a different way. Who did you hear about the Discovery Institute from in the summer of 2004?

A: Mr. Buckingham.

Q: Do you recall anything that he said to you about the Discovery Institute?

A: No.

Q: I am going to show you what has been marked as Exhibit 39. Do you recall seeing that e-mail at about the time it was sent?

A: Do I have specific recollection? No. Once again, as

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with my prior answer, it would not surprise me that I would have seen it in some capacity.

Q: As I understood your prior answer, you thought you had seen 38 in the course of reviewing documents for this litigation?

A: That is correct.

Q: Is your answer the same for 39?

A: That is correct.

Q: The date on 39 is October 19, 2004. Let's put it in context.

There was a School Board meeting on October 18th, 2004; is that correct?

A: That's correct.

Q: Is that the meeting that a decision was made about the biology curriculum?

A: That is correct.

Q: Had you had any contact with the Discovery Institute prior to the Board meeting of October 18th?

A: I can't tell you with absolute knowledge when my conversations with the Discovery Institute was.

Q: Had you reviewed any materials either published or made available by the Discovery Institute prior to the Board meeting of October 18?

A: My recollection is that Mr. Buckingham gave me two DVD's. Whether they were processed by the Discovery

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Institute or not, I cannot tell you because I don't remember. And I did not look at them, but I was in possession of those. And I gave them to Mr. Baksa.

But as far as research and reviewing, I can't speak to that. There was a conversation I had with the Superintendent up in Wisconsin who was directly involved with the Discovery Institute. I can't tell you what timing she gave me on information that she had received from the Discovery Institute, whether it was before the 18th or after the 18th. I just remember it being in the fall.

Q: Have you ever reviewed the DVD's that Mr. Buckingham gave you?

A: I did not review the DVD's Mr. Buckingham gave me; although, Mr. Bonsell gave me the same DVD's later on, and I did review them later on.

Q: When did you review those DVD's?

A: Within a time frame of two to three months ago.

Q: After the litigation was filed?

A: Yes.

Q: What did you tell Mr. Baksa about the DVD's when you gave them to him?

A: Beyond the fact that Mr. Buckingham gave me these as something he may want to take a look at, I don't remember anything about that.

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Q: Why did you think Mr. Baksa might want to take a look at them?

A: Because a Board member was communicating that this is a curricular interest of his.

Q: When Mr. Buckingham gave you the DVD's, did he say that they had anything to do with the selection of a biology textbook?

A: I don't remember any conversation I had with him concerning it.

Q: Did you have any understanding why he gave you the DVD's?

A: He was interested in the curriculum that was presented in the DVD's.

Q: What did he say about what that curriculum was?

A: I can't remember.

Q: Through the time of the Board meeting in October, October 18th, did Mr. Buckingham tell you anything about his contacts with the Discovery Institute?

A: Yes.

Q: What did he tell you?

A: I don't remember. I know he was in contact with them, but I don't remember any information about the specifics.

Q: Do you recall any discussion at a Board meeting at which Mr. Buckingham either advised the Board that he was in

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touch with the Discovery Institute or that the Board told Mr. Buckingham that he was authorized to be in touch with the Institute on its behalf prior to the October 18th meeting?

A: You have two separate questions.

Q: Right. That is a bad habit I have. Sorry.

A: The first question I think you asked is did Mr. Buckingham tell the Board that he was in conversation with the Discovery Institute, and my recollection is yes.

Did the Board direct him to be in conversation with the Discovery Institute? I do not remember that directive, no.

Q: Okay. I am going to show you what has been marked as Plaintiffs 40 and ask just a few questions about that.

MR. SCHMIDT: I understand you may have some reservations about any testimony about that document.

MR. GILLEN: Thank you. Tom, in other words, I don't want him to testify about any discussion about these recommendations just so you understand where I am coming from.

MR. SCHMIDT: I do.

MR. GILLEN: Thank you, Tom.

BY MR. SCHMIDT:

Q: You have had a chance to look at Plaintiffs 40?

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A: Yes.
Q: Do you recall seeing that e-mail at around the time it was sent by Seth Cooper which I think is December?
A: I can't speak to the specific time period. I can speak to the fact that I remember his recommendations.
Q: Recognizing the concern that has been expressed by Mr. Gillen, I don't want you to tell me about the discussion of any recommendations, but I do want you to tell me when you became aware that such a recommendation had been made.
A: It would be about that time period.
Q: What is the date on that e-mail? I don't have it in front of me.
A: December 10th, 2005 — 2004. My apologies.
Q: What was the context or setting when you became aware of his recommendation?
A: The Board President and I had a conversation.
Q: The Board President at that time was Alan Bonsell?
A: Mrs. Sheila Harkins.
Q: Sorry. My memory is middle aged, too.
A: It changes in December.
Q: Was anyone else present for that discussion with Sheila Harkins?
A: It was over the phone, no.
Q: Plaintiffs 40 includes a statement by Seth Cooper that

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he has been in touch with Heather Geesey prior to the e-mail and has been communicating with her.
Do you recall seeing that in Exhibit 40?
A: Do I remember seeing it? No. But I remember that issue, yes.
Q: Do you recall that Heather Geesey had either been given or taken on any responsibility to be in touch with the Discovery Institute at any time prior to the December 10th e-mail?
MR. GILLEN: Object to the form.
A: I remember Ms. Geesey in some capacity discussing this issue with the Board President. In what capacity, I can't speak to.

BY MR. SCHMIDT:

Q: Do you recall where that discussion took place?
A: No.
Q: Do you recall when it took place about?
A: About the same time. Approximately December 10th.
Q: Did you ever meet personally with Seth Cooper?
A: Yes.
Q: Where was that meeting?
A: In the administrative office.
Q: When was that meeting? Let me ask the question an easier way.
Isn't it true that the meeting took place after

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the December 10th e-mail?
A: Yes.
Q: Who else was present at the meeting?
A: Ms. Geesey, who was now Vice-President of the Board; Sheila Harkins, who is now President of the Board; I believe Mr. Bonsell, myself, Seth Cooper. And I don't remember whether Mr. Baksa was there or not.
Q: Who arranged the meeting?
A: Arranged?
Q: Yes.
A: Or requested?
Q: Let's start with requested. I understand that Seth Cooper requested the meeting?
A: Yes.
Q: Was there a person among those you have identified who attended who are associated with the School District who became the — if you don't mind the colloquial phrase — the point person for setting up the meeting?
A: That would be me.
Q: Why did you set up the meeting?
A: Because I discussed his request to meet with the Board President, and the Board President then directed me to set up a meeting.
Q: How long was the meeting; do you remember?
A: No.

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Q: Did you take any notes of the meeting?
A: I don't remember any, no.
Q: Did you meet with Mr. Cooper more than once?
A: Yes.
Q: When was the next time you met with him?
A: Prior to a School Board meeting.
Q: Which one?
A: I don't remember.
Q: Was it in December?
A: I don't remember.
Q: Was it before or after the litigation was filed?
A: After.
Q: Was there anyone else present at the meeting?
A: Yes.
Q: Who?
A: I believe Mr. Cooper, another individual from the Discovery Institute, Board members, myself, and Mr. Baksa.
Q: Anyone from Thomas More there?
A: No.
Q: In trying to put the dates in context, does it seem most likely that this meeting took place in connection with the January Board meeting?
A: I'm sorry. I am not sure I understand what the reference is for the January Board meeting.

Q: I thought you said the meeting took place prior to a Board meeting. Maybe I put prior to close to the meeting.

A: It was prior to one of the Board meetings when we were deciding who would be our — who would be included in a defense.

Q: Has the School District retained the Discovery Institute to represent it in connection with this litigation?

MR. GILLEN: Object to the form.

A: No.

BY MR. SCHMIDT:

Q: Has the School District retained Mr. Cooper as its attorney?

A: No.

Q: Has the School District ever paid any money to Mr. Cooper or the Discovery Institute for any reason?

A: I don't know whether we have purchased materials from them or not. But beyond purchasing materials, no.

Q: Following either the first or the second meeting you have testified about, has the School District exchanged any written communications with the Discovery Institute putting aside the purchase of materials?

A: Not that I'm aware of, no.

Q: Following the Board meeting at which the District considered whether to include Mr. Cooper and/or the

Discovery Institute as part of its legal team, did you communicate with the Discovery Institute or Mr. Cooper on that subject?

A: No.

Q: To your knowledge, is the Discovery Institute and/or Mr. Cooper still waiting for an answer from the District on that subject?

A: No.

Q: Did somebody communicate with them?

A: That, I do not know. I do know that as public record, the Board made action on hiring the Thomas More Center.

Q: It is your assumption that somehow that information was conveyed to the Discovery Institute and Mr. Cooper, but you weren't the person who conveyed that information?

A: That's correct.

MR. GILLEN: Can we take a break for two minutes?

MR. SCHMIDT: Sure.

(A recess was taken.)

AFTER RECESS

MR. SCHMIDT: I am not going to pursue questions about the recommendations made by the Discovery Institute, the discussions about it, reasons why it wasn't followed because I understand it is your position that that is all privileged.

And while we disagree about the privilege, I think

the agreement that you made with Eric earlier is that we are simply going to reserve our rights to pursue that in the future if we chose to. But I am not going to burden the record with a whole lot of questions that you then instruct the witness not to answer. I think that is a question we will put aside.

MR. GILLEN: Thank you, Tom, exactly. And for my part, I have tried to let you guys get the surrounding circumstances. And then if there is an issue there, if you guys want to press it, we can do that.

BY MR. SCHMIDT:

Q: I have a few questions just about some of the mechanics of how you assist the Board do its work. I understand from one deposition I have taken that the Board members receive a written agenda and a packet of materials prior to each Board meeting.

Am I right on that understanding?

A: That's correct.

Q: Is it your office that assembles those materials and sends it out to the Board members?

A: That is correct.

Q: Is it done under your supervision?

A: That is correct.

Q: Who actually prepares the agenda; is that something that you have a role in?

A: Yes.

Q: What is your role?

A: I do the draft agenda based on recommendations from each of my supervisors and department chairs. When I say department, I am not talking about faculty. I am talking about buildings and grounds, business, transportation, food service.

Once the draft has been developed, I then meet with the Board President and we both review it. And when the Board President is satisfied with the agenda, then it becomes the final agenda that gets sent out.

Q: I know there has been discovery and some testimony about the preparation of minutes of Board meetings. I have a few questions about that.

I understand that there is a person who is nominally the secretary of the Board. Am I right about that?

A: Please define nominally.

Q: Is there a member of the Board elected or appointed as secretary?

A: No.

Q: Is there a paid employe of the District who is the secretary for purposes of Board meetings?

A: Yes.

Q: Is it that person's responsibility to prepare written

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minutes of each Board meeting?
A: Yes.
Q: When the minutes are prepared, do you review them before they are distributed to the Board?
A: Yes.
Q: Why do you review them?
A: For accuracy of information.
Q: It is my understanding that the Board meetings are recorded on a tape. Am I right on that understanding?
A: Yes.
Q: What happens to the tapes?
A: Up to the 18th of October, once the Board ended up approving the minutes, they were either destroyed — and this goes beyond my Superintendency — or recorded over.
Q: When you review the minutes for accuracy, do you also listen to the tape?
A: No.
Q: Has it ever happened that a verbatim transcription of a tape of a Board meeting has been made?
A: Yes.
Q: How often has that happened?
A: I will only speak to my understanding.
Q: Right. That is all I am asking about.
A: Once.
Q: Which meeting?

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A: October 18, 2004.
Q: Who made the decision to transcribe that tape?
MR. GILLEN: Object to the form.
A: I don't remember.
BY MR. SCHMIDT:
Q: Did you review the transcript of the tape for accuracy?
A: I read the transcript. I did not listen to the tape and the transcript at the same time, no.
Q: What is your understanding of the reason for making a transcript of that tape?
MR. GILLEN: Object to the form.
A: My recollection is that it was a comment made by Ms. Geesey during the Board meeting that received media attention, and she believed she was misquoted and wanted documentation to prove that she did not say what the newspaper reported her in saying.
BY MR. SCHMIDT:
Q: Is the comment that you have just referred to her reported statement about teachers being fired if they sought separate legal representation?
A: That's the newspaper quote. That's not what she nor I believe she said.
Q: I understand that. But that was the reported statement?
A: Yes.
Q: That led to the request that the tape be transcribed; is

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that right?
A: I'm not going to on the record to say that was the sole issue, but that's my recollection because that's the research that I was directed to do to find out if we could prove that that was not said.
Q: What do you recall that she actually said?
A: The background was in conversing, the Board was discussing the language of the curriculum, and at the same time the teachers were voicing their concern about the language.
And a Board member asked whether the solicitor had reviewed the language and approved it, and the answer was yes. And then Ms. Geesey ended up saying well, if that is incorrect, then we should fire him, referring directly to the solicitor. But the inference from the teachers was she was referring to them. She used the pronoun and obviously not the noun.
But it was my recollection — and in similar fashion I believe the majority of the Board — that she was talking about the solicitor. If she was talking about the teachers, I would have pointed her to specifics that that would not have been an issue that she had either the authority to do or the ability to do, or an issue that is a fireable offense.
The reason that I did not convey is that she does

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have the authority as a Board member to hire and fire the solicitor, but she does not have the authority to fire specifically unilaterally or collectively as a Board any teachers. So I never made it an issue.
The first time I realized that it was perceived differently was when the paper reported it the next morning.
Q: Did you bring the newspaper report to Ms. Geesey?
A: No.
Q: Do you have a practice in your office of looking at articles that appear in print that involve the Dover Area School District?
A: Yes.
Q: Who is assigned the task of reviewing the papers, or do you do that yourself?
A: The District operator.
Q: Do you share those clips with members of the Board?
A: Some clips, yes, but not all of them.
Q: Do you maintain a file of those clippings?
A: I don't.
Q: Does somebody in the School District office?
A: I do not believe so, no. Not all of them, no.
Q: What happens after the clippings are made?
A: My copy? I have thrown — after I have read the articles with the exception of this case, I have thrown

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them out.
Q: Have you ever responded to a news article by either providing additional information to the news media or attempted to correct what you believe was inaccurately reported?
A: No.
Q: Is there anyone on your staff who has as his or her responsibilities dealing with the news media?
A: Yes.
Q: Who was?
A: Mr. Troy Wiestling, an elementary principal.
Q: What are his responsibilities?
A: Media relations.
Q: For the whole District?
A: Yes.
Q: As an elementary school principal?
A: Yes.
Q: Was he ever given responsibility for dealing with the media in connection with the selection of a biology textbook or the discussions surrounding that decision that took place in the summer and fall of 2004?
A: No.
Q: I am going to show you a document that has been marked previously as Plaintiff Exhibit 3. I ask you to take a look at this.

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A: (Witness complies.)
Q: Have you had an opportunity to look at P-3, Dr. Nilsen?
A: Yes, I have.
Q: This is a Board Press Release for Biology Curriculum. It appears, as I am looking at the title, to be dated November 19, 2004 reposted December 14, 2004.
Am I reading that headline correctly?
A: That is correct.
Q: Does this two page exhibit appear to be something printed from the District's website?
A: Yes.
Q: Who wrote this press release?
A: I wrote the press release. The first indentation, the Board adopted. The second four paragraph indentation Mr. Baksa wrote in conjunction with the teachers and the Board.
Q: As I am following the chronology we have discussed this morning, the original press release, the one that was posted on November 19th, appeared before your meeting with Seth Cooper and the Discovery Institute; right?
A: Yes.
Q: Was the press release changed between November 19th and December 14th?
A: Yes.
Q: How was it changed?

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A: Nothing substantial. I believe there was a typo and a grammatical issue.
Q: Why was it reposted on December 14th?
A: Because we had updated the grammatical and the typo.
Q: If you look on the second page, which is Bates numbered P1308, I direct your attention to the paragraph following the indented material.
The second sentence says that you have directed that no teacher will teach Intelligent Design, Creationism or present his or her or the Board's religious beliefs. That's the end of that quote.
Those are your words?
A: Yes.
Q: You wrote that?
A: Yes.
Q: How did you direct the teachers as referred to in that sentence?
A: November 24th in my office with the whole Science Department, Union Representative Mr. Miller, Mr. Baksa, myself, we held a meeting with the teachers and discussed implementation of the biology curriculum.
And the teachers ended up repeatedly concerned with their issue of requiring to be teaching Creationism and/or Intelligent Design.
And I told them repeatedly at least two that I

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recollect and possibly three times, that they are not to teach Intelligent Design, and they are not to teach Creationism.
And the concern was raised that there may be religious conversation, and it is generally a practice in education that there are topics that should not be discussed. And I think the legal history will reflect teachers should not be presenting their own religious beliefs.
Q: Your sentence refers to the Board's religious beliefs. What are the Board's religious beliefs?
A: I don't know.
Q: Why did you include a direction to the teachers and a statement in this press release that the teachers were not to teach the Board's religious beliefs?
A: Because I think there was a belief in some science teachers that Board members had individual religious beliefs.
Q: What was your understanding of the basis for that belief by the science teachers?
A: I thought they believed that the Board — or at least individual members in all fairness, because the Board is seen as a collective, and it is not; it is individuals — had a religious intent of the action.
And my comment to them was that's not an area of

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conversation. No one's religious beliefs is an area of conversation to be discussed in individual classrooms.

Q: Why did you direct them not to teach Creationism?

A: It is illegal.

Q: What is your understanding of Creationism? What were you referring to when you used that term in this sentence?

A: I was referring to their statement of Creationism, meaning that they believed they are being required to teach Creationism. So I was not interested in my definition, as much as I was interested in their definition. And I don't know what their definition was except they believed they were teaching a subject matter called Creationism.

My answer to them was no, you are going to teach the individual standards as required by the Pennsylvania Department of Education.

But getting back to your original question, my definition of Creationism, I think as defined in the court case a Judeo-Christian Biblical reference to the origins of life.

Q: When you first prepared this press release in November of 2004, did you have an understanding that teaching Creationism as you understood it was illegal?

A: Yes.

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Q: How did you come to have that understanding?

A: I think it amounts to being common knowledge of various and very specific legal cases in administration, conversations and/or education. We all are taught certain individual cases. And whether I received that information about Aguillard in my undergraduate or graduate or consistent reading, I can't speak to it. But I was familiar with that case.

Q: Why did you direct the teachers not to teach Intelligent Design?

A: Two reasons. One, they didn't want to teach Intelligent Design, and that was not their interest. And I supported them in that.

And secondly, it is not curricular directed meaning we are standards driven, and we end up dealing with the individual standards that are presented. And as stated earlier, we don't have enough time to cover all the material that we end up covering. The state requires us to touch base on the Darwinian Theory and discuss that. And we do discuss that.

And due to the time constraints, as well as it currently not being in the state standards, they were directed not to teach it.

Q: What was your understanding of the teachers' reasons for not wanting to teach Intelligent Design?

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A: I believe they thought and they stated they thought it was illegal.

Q: What did they say made it illegal?

A: I don't remember. They just repeatedly said they thought it would put them in a situation of where they would get sued. The reasons behind that, I don't remember.

Q: If I understand the answer you gave a moment or two ago, you supported your teachers in their position of not wishing to teach Intelligent Design?

A: That's correct.

Q: So you shared some understanding of why they took that position?

A: No. Their position was that it would be illegal. I never said that issue. My issue was we only teach the standards, and currently that piece is not in the standards.

Q: Did you express that view to the Board in October when they were making their curricular decision that they were adding something in the curriculum that was not in the standards and that you thought that was inappropriate?

MR. GILLEN: Object to the form.

A: I communicated to the Board my recommendation of what should be placed in the curriculum. I did not

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communicate what or did not speak specifically to the Intelligent Design issue at all.

BY MR. SCHMIDT:

Q: I just want to be sure I understand the sentence before I move on to another topic. The teachers told you they didn't want to teach Intelligent Design?

A: That is correct.

Q: They told you that they thought it was illegal to teach Intelligent Design?

A: That is correct.

Q: You don't recall any understanding about why they thought it was illegal?

A: No, I don't remember why.

Q: Do you recall any discussion by the teachers that Intelligent Design was not science and for that reason wasn't an appropriate part of the biology curriculum?

A: After the November 24th meeting, yes.

Q: Do you recall any discussion with the teachers at the time of the meeting we are testifying about that Intelligent Design was religious in content and that is why teaching it would be illegal?

A: On November 24th?

Q: Well, let's try not to get the dates confused. This press release is issued for the first time on November 19th, and I believe your testimony has been that the

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meeting with the teachers took place before the release was issued.

A: No. This press release was issued before I met with the teachers.

Q: So when it says in this sentence we are going over that you have directed, it really means you will direct them not to teach certain subjects?

A: Yes.

Q: Okay. I am with you now.

MR. GILLEN: Me, too.

BY MR. SCHMIDT:

Q: I think my question was whether during the discussion with the teachers, you came to understand that at least some of them believed teaching Intelligent Design was illegal because it had religion as part of its content?

A: I don't remember if anyone ended up specifically stating that. I do remember them stating teaching Creationism was illegal, and I agreed with that.

Whether they ended up saying at that time period they believed Intelligent Design was religious and therefore illegal, I don't remember that at that time period.

Q: To put this in context, you predicted what you were going to tell them about a week before you actually had your meeting with them.

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Why was it before you had your discussion with the teachers about any of the subjects covered in this sentence we have been going over that you were directing them not to teach Intelligent Design?

A: Because I think the way the Board adopted the curriculum, they were not to teach Intelligent Design. Meaning if you interpret the prior paragraph, it doesn't say to teach Intelligent Design.

And I'm on record twice at two different Board meetings when a former Board member asked are teachers going to teach Intelligent Design, I said no in both instances.

It is my interpretation of what the Board did on October 18th that they are not teaching Intelligent Design. So it was my interpretation and directive to them as I saw that piece that that is what my direction was.

The Board member — former Board member basically said that the teachers would not be aware of what to do with that sentence. And I directed Mr. Baksa to flesh out the interpretation, and that is the four paragraph sentence.

And then in the November 24th, I reiterated once again that they are not teaching Intelligent Design.

Q: What was your understanding of the District's position that teachers were not to teach Intelligent Design?

A: I am sorry. I don't understand that.

Q: Okay. Why weren't the teachers to teach Intelligent Design?

A: Based on the fact that it is not one of the standards.

Q: My reading of the curriculum documents tells me that the amount of time devoted to Evolution is 19 days?

A: No.

Q: How much time is devoted to Evolution?

A: One to two days.

Q: What is the origin of life debate that is referred to in the next sentence of Exhibit P-3?

A: The origins of life debate is the origin of the creation or beginning, the genesis, if you would, not using Biblical references, but the beginning part of man.

Q: Of man?

A: Yes.

Q: What is Darwin's opinion about the origin of life as you understand it? I am now looking at the next sentence.

A: I don't know.

Q: What did you mean when you put that sentence in the release?

A: The Board believes that there are other options and discussions on Darwin's opinion on the origins of life, and I have communicated that.

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Q: The sentence reads the School Board has noted that there are opinions other than Darwin's on the origin of life — end of quote.

Do you know what Darwin's opinions on the origin of life are?

A: No.

Q: Did you make any inquiry about what the Board had in mind when it said there are other opinions?

A: No. But my context was some Board members differed with Darwin's concept of origins of life and communicated such publicly.

Q: Why did you capitalize origin of life in these sentences?

A: I have no idea.

Q: Are you aware of any opinions other than Darwin's opinion on the origin of life, whatever that may be?

A: Yes.

Q: What are the other opinions that you are aware of?

A: There is the opinion — and I have no idea how to spell it — Plantaria, whatever it is, where there are aliens that have come in some capacity. The whole conversation dealing with the pyramids and the structure that the earth was created by an outside force, whatever that — either alien as defined as an entity beyond homo sapiens on earth.

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There is the Big Bang Theory of where the beginning of time was created out of an explosion in some capacity. And there is also the conversation that there is a Godlike entity that created earth and everything on it.

MR. SCHMIDT: Off the record, please.

(An off-the-record discussion was had.)

(Plaintiffs Exhibit 43 was marked.)

BY MR. SCHMIDT:

Q: Dr. Nilsen, have you had an opportunity to review Plaintiffs Exhibit 43?

A: Yes, I have.

Q: Identify the document, please.

A: The document is Administrator's Biology Statement in Biology Class.

Q: Bates numbered 10991100. Do you know who prepared this document?

A: Yes.

Q: Who?

A: I did.

Q: What use was made of the document?

A: The document was read in total by either myself or Mr. Baksa.

Q: Verbatim?

A: 99.9 percent.

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Q: Was it the plan to stick —

A: As close as possible.

Q: Paragraph five on page two of the document includes a statement that there will be no other discussion of the issue and your teachers will not answer any questions on this issue.

What is this issue that is referred to in that paragraph?

A: The issue of Intelligent Design.

Q: When you prepared what has been marked as P-43, what was your understanding of the difference between the Intelligent Design explanation of the origin of life and Darwin's explanation of the origin of life?

A: When I prepared the document?

Q: Right.

A: At that time, I don't think I had an understanding.

Q: Do you recall when you prepared the document?

A: Yes.

Q: When?

A: It would have been in mid January.

Q: Do you have an understanding now?

A: I have somewhat of an understanding. I don't think I have a total understanding.

Q: I can't ask for perfection, but what is your present understanding?

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A: Intelligent Design refers to an order. Darwin refers to randomness.

Q: And how do those two notions that you have just stated have to do with the origin of life?

A: As it relates to Darwin, there could be a randomness. I think his theory is survival of the fittest. And Intelligent Design has a specific design to it, not a randomness.

Q: I think I took that from the order versus random. But what do those two notions have to do with what you have used the phrase and it is used in this document the origin of life; do you have any understanding of the relationship between the two concepts you have referred to and the origin of life?

A: Not beyond what I have said, no.

Q: You have been an educator for going on 20 years?

A: Twenty-nine.

Q: Twenty-nine years. Can you recall any instance in your career as an educator when students have been directed that they are not to discuss topics, and teachers are not permitted to comment on topics with students?

MR. GILLEN: Object to the form.

A: Yes.

BY MR. SCHMIDT:

Q: Can you give me another circumstance besides this one?

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A: Political affiliation, sexual education, issues within the community that are highly politically charged.

Q: And religion?

A: And religion.

Q: Did any parents or students ever contact you after the statement was read?

A: Not that I remember, no.

Q: I am going to show you a document that has been marked previously as Plaintiffs 9. Have you had an opportunity to look at Exhibit P-9?

A: Look at it. Read it in total, no.

Q: Let me ask you some questions. If you need to review it in any detail, just let me know. This is a document that contains Bates numbered pages 944 through 951. Let me ask you to turn first to page 946.

A: (Witness complies.)

Q: Do you recognize this document?

A: Yes.

Q: Is this the Biology One Curriculum that was in place before October 18th, 2004?

A: To the best of my ability, yes.

Q: I need your help to understand it. As I read this document, it suggested to me that there were 19 days out of the biology curriculum devoted to natural selection, the mechanism of Evolution and the origins of bio

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diversity. Have I read the top line correctly?
A: That's correct.
Q: And it appears, for instance, that the references to Darwin, Darwin's Theory of the origin of species and issues involving Evolution are spread throughout this 19 day period?
A: That is what is written here, correct.
Q: As I understood your testimony a few moments ago, it was the Theory of Evolution was limited to two days in the biology curriculum. Did I mishear your testimony?
A: You did not.
Q: Can you explain why you say two days and this appears to say 19?
A: The ugliness that every Superintendent and Assistant Superintendent has is the fact that teachers teach not solely the outline of the planned instruction. This obviously is the case.
Because when asking the specific teachers how many days they spend on the theory, they said two. So I am following what they have told us is the reality versus what is in the planned course. Meaning this document is obviously the instructional guide, but not what is in practice.
Q: As Superintendent, are you concerned that the guide's call for 19 days of instruction and your teachers are

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telling you they are only devoting two?
A: I think you noted my introductory comment of the ugliness of it, and the answer is yes. Whether the planned course is misdone or the instruction is misdone, I can't speak to that. But obviously, both should be similar.
Q: Back to page 944, have you seen this memorandum before today, the memorandum from Trudy Peterman to Mr. Baksa, Mr. Redding and Mrs. Spahr dated April 1, 2003?
A: Yes.
Q: I am assuming you saw it in the course of preparing documents for discovery in this case, but did you see it about the time it was issued?
A: I have no recollection of that except to say that it is carbon copied to me, and I would expect within my responsibilities that I would have come across it.
Q: Would you have read it?
A: Yes.
Q: Do you recall doing anything in response to or following receipt of this memorandum?
A: No.
Q: You don't recall any discussions with Mr. Baksa or Mrs. Spahr about it?
A: No. Let me rephrase that. About this specific memo with Mr. Baksa?

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Q: Yes.
A: Do I recollect anything? No, I don't.
Q: Were you concerned?
A: My apologies. Let me rephrase that. At the time. Obviously, I have had conversations since then.
Q: I understand. The first paragraph in the memo indicates that your science teachers are teaching that Creationism is an alternative theory of Evolution which I believe you testified a little while ago would be illegal in your understanding.
What did you do when you learned about what your teachers were doing in Biology I?
MR. GILLEN: I object to the form.
A: What did I do?
BY MR. SCHMIDT:
Q: Yes.
A: Nothing. I didn't think they were doing it.
Q: You didn't think they were doing it?
A: No.
Q: I will ask you to look at a sentence that starts five lines down in paragraph one on Bates page 944. She — I think referring to Mrs. Spahr — explained to Mr. Baksa that all biology teachers state that another theory of Evolution is Creationism. I know that is not the end of the sentence, but let me ask a question about that.

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If teachers were making that statement in their biology classes, is it your understanding that that would be improper?
MR. GILLEN: Object to the form.
BY MR. SCHMIDT:
Q: I am trying to avoid the word illegal even though that is a notion you used earlier.
A: No, I don't because I define teach and present other theories not teaching.
Q: So mentioning —
A: That there are other theories.
Q: I will say my question again. If I understand the distinction you are making, that to stand in front of a classroom sand say there is a theory or a belief in Creationism in the context of teaching Evolution is acceptable, but to go beyond that and describe what Creationism means or do anything more than simply mentioning it would be improper?
A: Correct.
Q: If a student says gee, teach, you just used the word Creationism, what does that mean, the teacher is supposed to say I am sorry, I can't tell you?
A: That's correct.
Q: Do you know who the Board member is that is referred to in the last sentence of that first paragraph, the Board

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member is supposed to have wanted fifty percent of the teaching of Evolution to involve Creationism?

A: Only indirectly.

Q: Who is it?

A: In my discussions with Mr. Baksa, he communicated to me that he believed they are referring to Mr. Bonsell.

Q: Without going over each of the five questions that are posed in paragraph two of Trudy Peterman's memorandum, do you know if those questions were ever answered by Mr. Baksa or anyone else in the administration of the School District?

A: No, I do not know.

Q: Did you direct anyone to provide those answers?

A: No.

Q: Did you believe when you saw this memorandum that it raised important issues that required some attention by the administration?

A: Yes, but not in the direction you are heading.

Q: What attention did you think it required to.

A: To make sure that the principal was telling the truth.

Q: What part of what is in this exhibit did you think was untruthful?

A: The third line, the third sentence Mr. Baksa mentioned that a Board member wanted Creationism taught in Biology I class.

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Q: What is untruthful about that statement?

A: I am not aware of that, nor is Mr. Baksa aware of that conversation. Nor did I ever hear a Board member mention that in any capacity. Neither did Mr. Baksa.

Q: When you read that if you thought it was untrue, what did you do?

A: The germane area was directed to Mr. Baksa. It is his responsibility to take care of that additional quote. It is my responsibility to deal with the Principals, the behavior.

Q: What did you do with it?

A: It reflected in her evaluation.

Q: In what way?

A: Her behavior was evaluated. Her conversations were evaluated negatively.

Q: When did her evaluation take place?

A: June of 2003 and June of 2004, at the end of each of her two years.

Q: Now as I read this memorandum, the first paragraph, it appears to me that Trudy Peterman is reporting on a conversation that she had with Mrs. Spahr in which Mrs. Spahr recounts a conversation with Mr. Baksa.

Have you taken any disciplinary action with Mrs. Spahr for misstating or misrepresenting a conversation she had with Mr. Baksa?

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A: No.

Q: Why not?

A: Two reasons. One is the Superintendent doesn't have direct supervision in the evaluation of teachers. Those are the individual responsibilities of the building principal.

And secondly, this conversational capacity would end up being between the conversation of Mr. Baksa, Dr. Peterman and her eventual responsibilities of evaluation.

Q: I misunderstood that answer.

A: Meaning if Mrs. Spahr is misquoting Mr. Baksa, it would be Mr. Baksa's responsibility to communicate to Dr. Peterman of the misquotation.

Q: Do you know whether he did that or not?

A: No, I do not know that.

Q: As I understand what happened in response to the two sentences that appear at the beginning of — I am sorry — three sentences that appear at the beginning of this exhibit, Dr. Peterman is disciplined for having made a statement that she heard from Mrs. Spahr, but Mrs. Spahr is not disciplined for having made the original statement which you and Mr. Baksa think is untrue?

MR. GILLEN: Object to the form.

A: I can speak to the first which is yes. I can't speak to

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the other point based on the fact that I have not an understanding of what Dr. Peterman did and what Mr. Baksa did with the individual teacher.

Q: Did you ask Dr. Peterman what she did in her supervision of Mrs. Spahr about this subject?

A: No, not this subject, no.

Q: Is it your position as the Superintendent that when somebody that you are evaluating repeats the statement of another person, if that statement turns out to be untrue, that the person you supervise bears the responsibility for that untruth?

Let me withdraw the question. It's too big. I have already got your answer on it. I understand what you did.

MR. GILLEN: Thank you, Tom.

BY MR. SCHMIDT:

Q: Did you have any further discussion with Mr. Baksa about the subject of his reported conversation with Mrs. Spahr on the topics that are addressed in this memorandum?

A: Yes.

Q: When did you have that conversation with him?

A: Over the past year.

Q: Did you have a conversation with him around the time that this memorandum was issued in April of '03?

A: In a general sense, yes. As it relates to specifics,

] no.
Q: How did you reach the determination to give Dr. Peterman a bad evaluation because of what appears in this first paragraph without doing an investigation —
MR. GILLEN: Object to the form.
BY MR. SCHMIDT:
Q: — with Mr. Baksa?
MR. GILLEN: I am sorry.
MR. SCHMIDT: That is all right. I paused.
A: The evaluation was not solely based on this individual action. It was significantly broader obviously than this. And the behavior reflected not solely the information, but the process of the information.
BY MR. SCHMIDT:
Q: Did you ever instruct Dr. Peterman about how she was to behave or interact with the Board at Board meetings?
A: Yes.
Q: What instructions did you give her?
A: The Board directed me to direct to her that when she came to Board meetings, that she like every other individual was to be recognized prior to coming to the podium, was to direct her comments to the Board and not the constituents.
She was also not to raise her voice. She was also not to pound the podium. And she was to be on point,

not wander off a point.
Q: Did you give her those directions in writing?
A: Yes.
Q: Is that the current state of her instructions with respect to Board meetings?
A: She is no longer employed.
Q: Was she fired?
A: No. She has since gone to another district where she is in litigation with the Superintendent because the Superintendent put her on leave, as the prior district also put her on leave. So out of three districts, two out of the three, she was put on leave for behavior unbecoming to an administrator.
Q: I would like to show you a document that has previously been marked as Plaintiffs 28. I just have a quick question or two about this.
Dr. Nilsen, at least initially, you can probably answer my question by looking at the first page. If someone else has already asked this, I apologize to you.
But is this your handwriting on this document?
A: No.
Q: Do you know whose it is?
A: Without certainty. But it does look like Mr. Baksa's. It is neater than mine.
MR. GILLEN: Off the record.

(An off-the-record discussion was had.)
BY MR. SCHMIDT:
Q: If you look back to Bates page 238, do you recognize that handwriting?
A: No.
Q: Do you recall Mr. Buckingham making a statement about someone died on the cross for us two thousand years ago at the June, 2004 meeting?
A: No.
(Plaintiffs Deposition Exhibit 44 was marked.)
BY MR. SCHMIDT:
Q: Dr. Nilsen, I am showing you a document that has been marked as Plaintiffs Exhibit 44, Bates pages 1115 through 1117. Please take a look at it.
A: (Witness complies.)
Q: Have you had a chance to look at the document?
A: Yes.
Q: These appear to be excerpts from a document generally titled Superintendent's Weekly Update. Am I correct about that?
A: Yes.
Q: What is the Superintendent's Weekly Update?
A: That is sent to all Board members, a weekly report on events that happen on non Board meeting weeks as well as during Board meeting weeks.

Q: Does anyone else receive a copy of the update?
A: The administrative staff and the Board members.
Q: Is it available to the public?
A: No.
Q: When you said administrative staff?
A: Principals and Department Supervisors.
Q: Who is the Mr. Russell referred to at the top of the first page of this?
A: He is the District Solicitor.
Q: The document begins with an Update dated November 5, 2004. Is that the date this is published if you will?
A: Disseminated.
Q: Disseminated on the 5th, okay. This one starts with B. right under the title. Is that a mistake, or was a section redacted before the document was copied; do you know?
A: The directions was to communicate to all of the documents that I had in possession that dealt with the case. We ended up for the purpose of efficiency eliminating all of my Superintendent report's peripheral information.
So the only thing that was listed on the sheet were items. For example if you turn to the next page, 1116, you will note under the December 3rd, it begins with a C.

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Q: All right. So they have been redacted or cut and pasted?
A: Yes.
Q: What we will have when we go through this is the publication date and then whatever was within the Superintendent's Weekly Update that has anything to do with this case?
A: That is correct.
Q: Just give me one moment. If you look at page 1117, there is a paragraph numbered five just above the middle of the page.
You had testified a while ago about a conversation with someone from a Wisconsin School District. Is this the conversation —
A: Yes.
Q: — that you were referring to? Do you have what you describe in the last sentence or second to the last sentence of paragraph five as the Grantsburg information.
Do you have that separately maintained in your office?
A: Yes.
Q: Has that been produced in this litigation?
A: It is my understanding —
MR. GILLEN: Can we take two minutes?

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(An off-the-record discussion was had.)
(A recess was taken.)
AFTER RECESS
BY MR. SCHMIDT:
Q: Dr. Nilsen, let me show you what has been marked or a part of what has been marked as Plaintiffs Deposition Exhibit 6, which has on it Bates numbers P-1616 through P-1622.
Have you ever seen this document before?
A: Yes.
Q: Is this the transcription of the tape of the October 18th Board meeting?
MR. GILLEN: Object to the form.
A: It is a transcription of the discussion on the curriculum piece. I do not believe it is the transcription of the full tape.
Q: The tape is of the entire meeting; is that correct?
A: No. There was two tapes. And the second tape, if you go to P-1622, it ends. The second tape did not record. So the District is in possession of one tape that recorded and a second tape that has nothing on it.
Q: The tape that recorded, does it include material other than what appears in Plaintiffs Deposition Exhibit 6?
A: I believe so, yes.
Q: Was this written transcription prepared under your supervision or ultimately your supervision?
A: Yes.
Q: Who actually prepared it?
A: I believe the Board secretary, one of the Board secretaries.
Q: I think you testified earlier that you did not compare the transcript to the tape; am I right about that?
A: That is correct.
Q: Did you review the transcript to verify — to confirm its general accuracy compared to your memory of the discussion?
A: Yes.
Q: Did you find it to be generally accurate?
A: Yes.
Q: Was the transcript edited? And by that I mean did somebody do for the Board members what Vicki does for me, take out all the ah's and the bad grammar and punctuation and clean it up?
A: No.
Q: This Vicki is the person I am referring to.
A: No.
Q: So this is verbatim to the best of your understanding?
A: The secretary may have self edited, but I can't speak to whether she did that or not. It is as close to the content — I can't speak to whether someone said ah or

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the and she eliminated those. Nonetheless, I think what was stated there clearly was transcribed.
Q: Does the discussion that concerned Mrs. Geesey appear anywhere in this transcript?
A: No.
Q: I am trying to understand why the transcript was made.
A: We didn't know where it ended.
Q: You knew if you listened to it.
A: I didn't listen to it.
Q: Look at page P-1619.
A: (Witness complies.)
Q: I am trying to understand what the process was in doing this. If you would go down from the top, it goes Bonsell, Brown, Bonsell, Nilsen, Brown. Do you see that sequence?
A: Yes.
Q: And then there is a statement noted on minutes. Is that a reference by the person who made this transcript that the voting is recorded on the minutes, and that the discussion around the vote is not actually being transcribed here? Does that question make sense?
A: Yes and yes.
Q: Looking further down just to confirm my understanding of your answers after we go Bonsell, Bonsell, Harkins Bonsell, Wenrich, Brown, where Mrs. Brown seconds a

motion, then there is a statement that says noted on minutes, question called, noted on minutes, vote on amended motion, noted on minutes, that is not what somebody actually said in this verbatim transcript; that just says to the reader information is available in the minutes?

A: No. What she is requesting is that the minutes reflect exactly what she is doing.

Q: Who is requesting that?

A: Mrs. Brown. She wants the minutes to say that she did exactly what she did.

Q: So this statement here or this series of short sentences that I just read is a transcription of what Mrs. Brown said; that is your testimony as well?

A: That is correct.

Q: Where is the transcription of how people voted then? Where are the ayes and nays?

A: They would be the Board minutes.

Q: How do I know that by looking at this? It is not a verbatim transcript then; am I right?

A: No, it is a verbatim transcript.

Q: When somebody says I vote yes, if it is verbatim that is going to be in here, but it is not. I am just trying to understand how to read it. I am not trying to be argumentative.

A: Understand.

MR. GILLEN: Off the record.

(An off-the-record discussion was had.)

A: I believe this conversation never got to a vote. I think there are these pages dealing solely with the discussion, and the vote never got to the final vote because there are votes.

For example if you go to P-1619, the mid section, people are saying second, and people are saying moved.

Example: Bonsell, Brown, Bonsell, Nilsen, Brown, Brown, Bonsell, Bonsell, Harkins, Bonsell, Wenrich. Wenrich moves. I move to amend the motion, and Mrs. Brown seconds it. And then they call for the question.

BY MR. SCHMIDT:

Q: Just to follow along if we are doing this conversational, if you look at that place that we were reading before, it says vote on amended motion - noted on minutes.

A: Okay.

Q: I will tell you the way I read that. That was the actual mechanics of voting is not recorded here, but it does show up on the minutes. I am not trying to make a big deal out of this.

A: No, no. To be candid, you may be correct, and I may be incorrect.

Q: We will find out. We will listen to the tape.

A: So your question because it does the more I look at this reflect votes that should have been noted. So what the secretary most likely did — she should have put these in parentheses because the inference was noted on minutes, maybe Mrs. Brown did not say noted on minutes. But yet, it is a reflection of that. You may be correct.

Q: We will see. I just was curious when I read it again, and I thought I would ask you.

A: Interesting.

Q: Could you look — before you put that to one side, let me say that I don't recall there was a lot of questioning about this at the first deposition.

MR. GILLEN: Nor do I, Tom.

MR. SCHMIDT: I do have a few more questions.

MR. GILLEN: That is fine.

BY MR. SCHMIDT:

Q: If you look at the last page of this exhibit which is Bates 1622.

A: (Witness complies.)

Q: I am asking you to look specifically at your statement.

A: (Witness complies.)

Q: Okay?

A: Yes.

Q: If you look at the paragraph that is next to your name — let me ask you first: Is that an accurate transcription of what you said at the October 18th meeting?

A: To the best of my ability, yes.

Q: The second sentence says quote I think the faculty and administration see a concern as it relates to teaching a specific dogma.

I am assuming you are referring back to the reference to Intelligent Design in the previous sentence.

Why was the faculty and administration concerned about teaching a specific dogma?

A: Well, I think there's two separate issues. I think the faculty believed Intelligent Design was something they did not want to teach because they thought it was illegal.

Our reference is the fact that it is not a standards driven concept.

Q: You will have to explain to me a little bit more. What is the connection between teaching a specific dogma, your words, and, first, the faculty's belief that teaching Intelligent Design was illegal?

A: Well, a specific idea that's not in the standards has difficulty with the standards driven district. Meaning

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if somebody brings in something that is not in the standards, and at this time there is discussion I was not familiar with what Intelligent Design was, I just knew it was not in the standards, so if somebody brings in something specific that is not in the standards, I have a difficulty with that.

And the definition of dogma is a general issue.

Q: What is your definition?

A: Something that intellectually is independent.

Q: Give me an example.

A: Wave theory versus linear theory for the theory of light.

Q: Have you ever heard either of those theories referred to by anybody as dogma?

A: No.

Q: Have you ever heard of religious beliefs referred to as dogma?

A: Yes.

Q: Looking down, there is a sentence that starts this way — I am not going to read it out loud. There is a sentence that starts because I do believe. Can you find that?

A: Yes.

Q: Can you explain what you meant in that sentence including what apparently was not audible to the person

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making the transcription?

A: I have no idea.

Q: All right. In the last sentence, you seem to be saying that if a discussion — let me tell you how I read that sentence. It seems to be saying that if there is a required discussion of Intelligent Design, you have the fear that someone will misinterpret something.

What was your fear?

A: Reflecting on what the teachers were saying, I think it was perceived as the teachers were perceiving it and other individuals were perceiving it as a religious issue.

Q: Do you remember what else you said, what is not transcribed here?

A: No.

(Plaintiffs Deposition Exhibit 45 was marked.)

BY MR. SCHMIDT:

Q: Dr. Nilsen, have you had a chance to look at P-45?

A: Yes.

Q: Are the recipients of this October 19th e-mail science teachers?

A: Yes.

Q: Are they all of the high school science teachers?

A: No.

Q: Why did you write to these particular science teachers?

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A: They are the individuals that teach biology and the topic that was adopted at the prior Board meeting.

Q: What was the discussion you had with these folks about the Board's action on October 18th?

A: I think what generated this memo was the November 24th meeting with the teachers.

Q: That is the one you have already testified about?

A: Yes.

(Plaintiffs Deposition Exhibit 46 was marked.)

BY MR. SCHMIDT:

Q: I would like you to look at a document marked P-46. While we're waiting for you to look at it, let me put on the record that P-45 is Bates P-341 and P-46 is Bates 342. Have you looked at P-46?

A: Yes.

Q: Who are Jere — is it Wynegar?

A: Wynegar.

Q: And Sandi Bowser?

A: Union Presidents.

Q: Does this refer to the decision about the biology curriculum?

A: Yes.

Q: Do you recall what Jere and Sandi said or did at the Board meeting on this subject?

A: My recollection is that Sandi did not say anything, but

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Jere did as per the direction of the memo congratulating him on his comments.

Q: Do you recall what they were?

A: No. I just remember him doing a very good job of it.

Q: Was he speaking in opposition to the adoption of the curriculum change?

A: No. I think he was speaking to including the teachers in the process and making sure the teachers were involved in the process.

Q: Do you recall the discussion that you had with Jere and Sandi after this e-mail was sent, if you had one?

A: The discussion was included in the 24th. Sandi and a different union rep were at the November 24th meeting.

(Plaintiffs Deposition Exhibit 47 was marked.)

BY MR. SCHMIDT:

Q: Have you had a chance the look at what has been marked as P-47?

A: Yes.

Q: Which is Bates 344. Who is Joel Riedel?

A: High School Principal.

Q: Is he still the Principal?

A: Yes.

Q: Did you have the meeting that is requested in the first paragraph of Exhibit 47?

A: Yes and no.

Q: Tell me the yes part and then the no part.
A: The meeting lasted two minutes.
Q: So everyone was there, but it didn't last very long?
A: Two minutes.
Q: What was the discussion at the two minute meeting?
A: The union representative at the time period ended up saying that she was recommending that none of the Department Chair people speak to me. And I concluded that based on that fact, there was no reason to have a meeting if I can't have a discussion.
Q: If you look at the third paragraph of P-47, it starts I would request they communicate their concerns. Do you see that?
A: Yes.
Q: It appears to end with in caps INTELLIGENT DESIGN. Am I reading the paragraph incorrectly on this e-mail?
A: Are you talking about the paragraph — yes.
Q: Is that paragraph accurate?
A: Yes.
Q: I am going to show you what has been marked as P-27. I apologize if you have already been questioned on this, but I do have one question.
P-27 is a two-page document Bates number 975, 976. I assume you have seen these before in the course of document production.

Let me ask you about page 975. Is that your handwriting?
A: No.
Q: Do you know whose handwriting it is?
A: Mr. Baksa's.
Q: Did you ever speak with Miriam Parsons of Connecticut?
A: Not to my recollection, no.
Q: Do you know if he did?
A: No, I do not know.
Q: Did you ever discuss with him a conversation that appears to be summarized by the notes on page P-975?
A: To my best recollection, no.
Q: Would you turn to the second page of this exhibit?
A: (Witness complies.)
Q: Is that your handwriting on the page?
A: Yes.
Q: What does it say?
A: Mike, please see me, press, reason status of sentence.
Q: What did you intend to convey by that note?
A: I wanted Mike to see me about the above paragraph.
Q: That is the paragraph written to you by Alan Bonsell?
A: That is correct.
Q: What did you want to see Mike about in that paragraph?
A: I believe if my recollection is correct, this is the genesis of the press release that was generated.

Q: The one first published on November 19th?
A: That's my recollection, yes.
Q: When you use the term reason or reasons, what were you referring to?
A: Telling him why I wanted him to see me concerning this.
Q: And status of sentence, what does that refer to?
A: How the sentence was used.
Q: Which sentence?
A: The sentence on the page.
Q: I am sorry?
A: The sentence on the page.
Q: Which one?
A: The one from Mr. Bonsell.
Q: I see a paragraph of three or four sentences. Are you referring to any one in particular?
A: No, the whole paragraph.
Q: So when you say status of sentence, you are referring to the typed portion that appears above on the page?
A: Yes.
Q: Why did you call it a sentence?
A: It was 1:45 in the afternoon. It should have been sentences. My apologies.
Q: No apology needed.
(Plaintiffs Deposition Exhibit 48 was marked.)
BY MR. SCHMIDT:

Q: Dr. Nilsen, I am showing you what has been marked Plaintiff Exhibit 48, Bates number 361. Have you had a chance to look at P-48?
A: Yes.
Q: Can you help me decipher that? It appears to be a memorandum dated November 30th, 2004 to you from Sandi Bowser with copies to the people identified. And then there is a re line as per your request.
Who was requesting what?
A: I was. This came out of the November 24th Board meeting of where the union was requesting specific actions verbally, and I communicated to her that I wanted all union communications in writing.
Q: On all subjects, or just what is referred to here as Creationism, Intelligent Design?
A: On all subjects where they are requesting a specific action being done.
Q: So you wanted everything from the union in writing?
A: Yes.
Q: If there was an action requested?
A: Yes.
Q: To be sure I understand it, what this seems to say is that any communication by a union member pertaining to Creationism/Intelligent Design shall be in written form and forwarded to the DAEA President; right?

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MR. GILLEN: Object to form.
A: That is what they are requesting, yes.
BY MR. SCHMIDT:
Q: I understand that, yes. Has that been done?
A: To the best of my understanding, yes.
(Plaintiffs Deposition Exhibit 49 was marked.)
BY MR. SCHMIDT:
Q: Dr. Nilsen, I have showed you what has been marked as Plaintiffs Exhibit 49, 000387 and 000388. This is a memorandum dated January 6, 2005 from science teachers in the high school to you.
Did you receive this memorandum at about the time it was dated?
A: Yes.
Q: Does this memorandum reflect the concerns of the science faculty that were expressed to you at the meeting on November 24th?
A: No.
Q: What is difference between this memorandum and the concerns expressed at that meeting?
A: On November 24th, there was no communication about a Code of Professional Practices.
Q: What about the concerns that Intelligent Design is not science and is not an accepted scientific theory, and that's why they were opposed to having to teach it or

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even mention it in the classroom?
A: That was what was communicated on the 24th.
Q: Didn't they also communicate at that time that they were concerned about the religious content or implications of Intelligent Design?
A: I don't remember specifically their rationale. And in fact, at the 24th meeting, they never once discussed an opt out issue.
(Plaintiffs Deposition Exhibit 50 was marked.)
BY MR. SCHMIDT:
Q: Dr. Nilsen, I have shown you what has been marked Plaintiffs Exhibit 50, which is Bates pages 1118 through 1120 and appears to be a second set of sections of the Superintendent's Weekly Update that were put together in a cut and paste form for January 7th, 14th and 19th; is that what we have got?
A: Yes.
Q: Are there similar updates for the months of February, March and now the first week in April?
A: Yes.
Q: Are there any discussions in any of those updates of the biology curriculum or related topics?
A: Yes.
Q: What is the Dover Ministerium?
A: A group of ministers that meet on a monthly basis.

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Q: All denominations?
A: Yes.
Q: Have you attended their luncheons on any occasions other than the one that is referred to on page 1120?
A: Yes.
Q: Do you do that by invitation? I mean their invitation.
A: Both. Meaning there are times I have contacted them, and there are times they have contacted me.
Q: Who is Pastor Rowand?
A: A Board member.
Q: If you look at page 1120, do you recall what you told the Ministerium when you and Mr. Baksa attended the luncheon that is referred to in that paragraph six?
A: I reviewed to them the implementation. I reviewed with them the four paragraph statement and answered any questions that they ended up having.
Q: If they asked you any questions about Intelligent Design, you didn't say you weren't going to discuss it; did you?
MR. GILLEN: Object to the form.
MR. SCHMIDT: I withdraw the question. That was meant as a tease.
BY MR. SCHMIDT:
Q: If you look at that paragraph, number six, second line, the last word, is that meant to be divisive instead of

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decisive?
A: Where?
Q: Page 1120, second line, last word, paragraph six.
A: That's correct. It should be divisive.
Q: Why were you concerned about the divisive effect of what you referred to as our situation?
A: It was communicated to me that individuals in the community from the religious groups, in fact one of the plaintiffs is a former Pastor and one of the defendants is a Pastor.
So any time you end up with individuals on both sides, I have a concern. I wanted to make sure that it doesn't become a divisive conversation within any community, but especially that community.
Q: Any other concerns about the divisive effect of your situation in the Dover community?
A: Myriads of concerns.
Q: Dr. Nilsen, I have shown you what has previously been marked as Plaintiffs Exhibit 19, which is a copy of the DASD News dated February 19, 2005.
Dr. Nilsen, who decided to publish this Biology Curriculum Update?
A: The School Board.
Q: When was that decision made?
A: Late January, early February.

Q: Did you participate in making that decision?
A: No.
Q: Were you part of the discussion leading up to that decision?
A: Yes.
Q: What was your position on whether or not to publish this Update?
A: I think any time you can communicate accurate information and educate the community, I am always for it.
Q: Who wrote the text of the newsletter?
A: I believe it was a combination between originally Mr. Bonsell, a Board member, individuals from the Thomas More Center and other individuals on the Board collective.
Q: What was your role in preparing the contents of newsletter?
A: I filled in three facts; combined three pages into two; and arranged the information that could be on two pages.
Q: It sounds like you were the editor of the newsletter?
A: Don't have a language arts background. I won't say editor as much as publisher.
Q: You said you filled in I think you said three facts. Was that f-a-c-t-s or f-a-x?
A: F-a-c-t-s, specifically one of the items was how many

students were opted out. That information was not available beyond my desk. I think another information was the date the event happened. I think there was one other specific item of information that I provided.
Q: If you look on the first page of Exhibit 19, there's a section called Frequently Asked Questions. Who among the people that you have told us prepared the contents? Who wrote this section?
MR. GILLEN: Object to form.
A: I can't tell you who developed it beyond the fact that I know Mr. Bonsell was working with the Thomas More Center, and the draft I received was from the Thomas More Center.
MR. SCHMIDT: I need a two minute break because I have a note that is not here. If I can go get that, my office is right down the haul.
(An off-the-record discussion was had.)
(A recess was taken.)

AFTER RECESS

BY MR. SCHMIDT:

Q: I am going to show you what has previously been marked as Exhibit 41. Have you had an opportunity to look at 41?
A: Yes.
Q: Have you ever seen this before?

A: Yes.
Q: Can you tell us what it is?
A: It is a summary of a conversation I had with the two high school social studies teachers, a one Doug Hoover and Brad Neal.
Q: What was the conversation about?
A: The government curriculum as it relates to what is being taught in that curriculum and overall of the social studies curriculum.
It refers back to I think a conversation you had before or a question you had before whether any other Board members have any other questions beyond the science or look at any other beyond the science.
Mr. Bonsell also asked some questions about the activism of the Courts, whether we address that or whether we include or have a discussion in relationship to the founding fathers.
Q: When did you have the conversation with Hoover and Neal?
A: I would say sometime in '04. Probably the spring of '04.
Q: Who prepared this document?
A: I did.
Q: Is this a document prepared in anticipation of the conversation as a kind of outline of what is to be discussed, or was it a document prepared to memorialize

the conversation?
A: Memorialize the conversation.
Q: What happened after the conversation that had anything to do with the subject of the conversation?
A: It ended. Meaning if you look at the top after talking to Doug Hoover and Brad Neal, along with myself, generated four options to address Mr. Bonsell's question.
One was to review the information that they provided, Mr. Bonsell. Two, discuss Mr. Hoover and Brad Neal with Mr. Bonsell. Third is they invited Mr. Bonsell into their government class in April. And the opportunity to discuss or doing all three.
I presented those options to Mr. Bonsell, and he said he was too busy at that time period to do any of the above and was satisfied after my conversation that we did end up having the founding fathers, as well as a discussion on the Supreme Court activism piece.
In addition to that, the social studies curriculum is up for review next year. And he decided at that time period not to do anything more.
Q: Under C, miscellaneous, I understand now reading this document in context with your comments that Hoover and Neal plan to include a discussion in their courses on what are referred to as religious gains in court?

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MR. GILLEN: Objection. Object to form.

A: No. Hoover and Neal were not directed to do anything.

BY MR. SCHMIDT:

Q: I didn't say they were directed to do it. I understood your comments about what is done in this memorandum that following the conversation you had with Hoover and Neal, that they will in their courses discuss current religious gains in court, specifically with respect to the pledge, Bible clubs and Bible release programs.

MR. GILLEN: Object to form.

A: Your phraseology of that question, specifically the word will reflects a direction. I would prefer to state that they do that. Meaning there was no directive that they will in the future. It is the fact that they do already discuss that.

Q: Fine.

A: That is why I differentiate that.

Q: Do they discuss any other Supreme Court cases besides those that involve religious topics like the three that are mentioned in C2?

A: Yes.

Q: Do they discuss topics that might even come under the heading of court activism — I think that is the phrase you used — other than these three religious issues?

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A: Yes.

Q: Why weren't they mentioned in your memorandum because they weren't part of the discussion you had with them?

A: I think two of those topics were items of discussion that the Board had gone through during the school year 2004 and 2005 and were current at the national levels.

Specifically if you remember last year, there was the pledge conversation that came out of the in God we trust issue I believe out of California. And the Board also dealt with that issue because we had a former Board member come to the Board and discuss his request that the Board make a statement on that issue.

So the conversation generated out of what the Board was looking at currently and what was currently of national attention. And one could imagine the far reaching implications of an activistic Board — I am sorry — an activistic Supreme Court whether they decided to get into that issue or not.

It was a conversation that we had of what was currently happening within the Supreme Court. Because there is the irony from a historical perspective — and I remember this conversation with them — that conservatism criticizes the Supreme Court for its activistic stand.

But the only way you can solve that is have an activistic stand against what the Supreme Court had already done. There was a conversation we had about what was currently being discussed in the national paper, as well as what impact the Board — I am sorry — what impact the Supreme Court had directly on schools.

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Q: Okay. Let me just go back to explain one line of testimony you gave earlier this morning. I had asked you a couple of questions about the origin of life debate and what your understanding is of origin of life.

As I reflect back on your testimony, I am not sure I understand what you mean when you refer in the documents you have written and what you are understanding is about the policy of the Board when it refers to origin of life.

If you will bear with me for a minute, could you explain it again?

A: My apologies, but I think you asked three different questions.

Q: I am sure I did. That is the topic. If you would, tell me again what your understanding is, Dr. Nilsen's understanding is of the term origin of life?

A: The beginning of mankind.

Q: Is it your understanding that that is what the Board meant when it included that term in its revised biology curriculum?

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A: I can't speak for the Board except to say that comment is a reflection of what the teachers said they were doing.

Q: Okay. That might be part of where I am getting lost. What comment is a reflection of what the teachers said they are doing?

A: Origins of life is not taught.

Q: Teachers say we're not teaching origins of life; is that what you are saying?

A: Yes.

Q: And when the teachers say we are not teaching origins of life, what do you understand them to be saying?

A: They are not teaching macro evolution.

Q: What do you mean by macro evolution?

A: The Big Bang Theory, the jumping from species to species piece of Darwinian Theory.

Q: And is it your understanding as the Superintendent of the Dover Area School District that when the Board adopted its amended or revised curriculum, it was reflecting that understanding of what the teachers were doing?

A: Yes.

MR. SCHMIDT: All right. That is all I have. Thank you. I appreciate your staying through lunch to get this completed.

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MR. GILLEN: I just have a few questions, Tom.

BY MR. GILLEN:

Q: Mr. Schmidt asked you a few questions. One set of them related to Plaintiffs Deposition Exhibit 9 which is that memo from Dr. Peterman. Tom asked you did you take action in light of that, and you said no.

Just to be clear on this point, at the time that you received this memo, did Dr. Peterman have a lot of credibility with you?

A: Zero.

Q: Was it in large measure because this memo came from Dr. Peterman which explained your inaction?

A: Two things. One, first of all, I knew no one was discussing either from the administrative standpoint, or the Board standpoint, or Mr. Baksa's standpoint, or my standpoint any discussion of Creationism. So a memo that generated and stated that there was a discussion of Creationism had absolutely a non starter.

Secondly, as it related to Dr. Peterman, I didn't believe anything she put in writing anyway. In fact, one of the prior evaluations I had with her was to stop putting things in writing because she would put things in writing prior to knowing what actually was the reality. And I had to spend time with her going back and correcting what was on the record.

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She had a long history of putting things in writing that were inaccurate that we had to go back and correct.

She had dictated to the faculty that she no longer would talk to any faculty members, and that the only way she would communicate with faculty members is through Department Chairs. And the only way that Department Chairs could talk to her is if they requested a meeting.

And then in the middle of that year '03-'04, she communicated the Department Chair, she would no longer talk to them. So she generated information that was totally inaccurate in memo format.

So her credibility with me in any written format was absolutely nonexistent. And eventually, it was reflected in the end of the year evaluations.

Q: Tom also directed your attention to Plaintiff Exhibit 48. When I looked at it here today, I noticed that it said any future communication pertaining to Creationism/Intelligent Design intended for the Science Department shall be in written form.

Is it accurate that the teachers when they discussed Intelligent Design equated it with Creationism in the way they have here in this memo?

A: Yes. There was never any communication ever on Creationism. And they had a behavior of equating both, and therefore the memo would end up being tied to both.

Q: Tom asked you questions about religion and dogma. Was it clear in their communications that they equated Creationism with religion?

A: Yes.

MR. GILLEN: Those are the only questions I have.

MR. SCHMIDT: Nothing further.

(The deposition was concluded at 1:30 p.m.)

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COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CUMBERLAND :

I, Vicki L. Fox, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Cumberland, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

RICHARD NILSEN

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Camp Hill, Pennsylvania, this 29th day of April, 2005.

Vicki L. Fox
Reporter - Notary Public

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