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

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3 . . . . .  
4 TAMMY KITZMILLER, et al., . Civil Action No.  
5 Plaintiffs . 04-CV-2688

4

vs. . (JUDGE JONES)

5

6 DOVER AREA SCHOOL DISTRICT, .  
7 et al., .  
8 Defendants .  
9 . . . . .

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9 Deposition of: BERTHA E. SPAHR  
10 Taken by : Defendants  
11 Date : May 19, 2005, 10:11 a.m.  
12 Place : Two School Lane  
Dover, Pennsylvania

13

Before : Bethann M. Mulay, Notary Public  
Registered Professional Reporter

14

15

16 APPEARANCES:

17 AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA  
18 By: PAULA KNUDSEN, ESQ.

18

For - Plaintiffs

19

THOMAS MORE LAW CENTER  
20 By: PATRICK T. GILLEN, ESQ.  
21 For - Defendants

20

21

KILLIAN & GEPHART, LLP  
22 By: JANE GOWEN PENNY, ESQ.

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For - Bertha E. Spahr

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24 ALSO PRESENT: Michael Baksa  
25 Rena Staub

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I N D E X  
WITNESS

Examination

BERTHA E. SPAHR

By Mr. Gillen

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EXHIBITS

B. Spahr Deposition	Page
Exhibit Numbers	Marked
1. Documents Labeled Research	121
2. Handwritten Notes	159

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STIPULATION

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

BERTHA E. SPAHR, called as a witness, having been duly sworn, testified as follows:

BY MR. GILLEN:

Q. Good morning, Mrs. Spahr. I've introduced myself to you off the record. I'll do it again for the purpose of the record. My name is Patrick Gillen, and I'm an attorney for the defendants in this case. And as you know, this is the time and place set for your deposition which is my opportunity to ask you questions under oath, get your answers, and as I see it basically to get your side of the story.

Plainly we have a dispute here. People have different viewpoints as to what happened and so on. This is my chance to find out what you know about the dispute.

There are a few facets of this process that

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are sort of unique. The first is that Beth transcribes our exchange which places a premium on verbal answers to questions. And it's surprising how often we don't respond verbally. So throughout the process, please try and respond to my questions with yes or no or an explanation but not some of the things that we generally do like head nods or uh-huh or gestures that are difficult for Beth to record.

Relatedly, the exchange and the desire to record places a premium on complete sentences. If you would allow me to finish my questions before you begin to answer, you may well know what I'm getting at and begin to answer, but it makes the transcript a little difficult to follow, so please allow me to finish. I frankly confess that's a little difficult for me because sometimes I pause when I'm asking a question, but do your best.

The process also tends to lay bare the imprecision of human communication. You may find some of my questions unclear and not know what I'm trying to ask. If that's the case, let me know, and I'll do my best to clarify my question and make it more precise.

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1 By the same token, sometimes it's difficult  
2 for me to understand your answer. If I'm asking  
3 you questions to follow up, it's not for the  
4 purpose of harassing you. I just want to make  
5 sure where you're coming from and what you're  
6 getting at.

7 The deposition process is not an endurance  
8 contest. If at any time you would like to take  
9 a break, please let me know, and we'll do that.  
10 Likewise, my purpose today is not to harass you  
11 or make you feel uncomfortable. If I'm asking  
12 you a question that makes you feel  
13 uncomfortable, please let me know, and I'll do  
14 my best to respect your sensitivity consistent  
15 with my duty. I think that covers sort of the  
16 preliminary matters.

17 Have you ever been deposed before?

18 A. No.

19 Q. As we sit here today, Mrs. Spahr, are you on any  
20 medication that might impair your ability to  
21 perceive and respond to my questions?

22 A. None.

23 Q. If we look at the period from say January 2004,  
24 has there been any time during that period where  
25 you've been on medication that might impair your

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1 ability to perceive?

2 A. I have never been on medication.

3 Q. Excellent. Do you have any handicaps that make  
4 it difficult for you to perceive, recollect,  
5 respond?

6 A. No, I do not.

7 Q. That's good. A few preliminary questions about  
8 anyone-- Well, first, would you state your full  
9 name for the record.

10 A. My name is Bertha E. Spahr.

11 Q. And your current address?

12 A. 1385 Grandview Road in Spring Grove,  
13 Pennsylvania.

14 Q. How would you prefer that I address you for  
15 purposes of this deposition?

16 A. You may address me as Bert which is my nickname  
17 and appears on several-- But my-- Most people  
18 in my department call me Bert. My first name is  
19 Bertha. That's fine.

20 Q. I appreciate that. You've come up frequently as  
21 Bert, so it will be easier for me to do that if  
22 you don't mind. And for my part, call me Pat if  
23 you have a question that you want to direct to  
24 me, although I ask the questions, but if we need  
25 to talk, please use my first name.

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- 1           Let me ask you, did you speak with anyone--  
2       Well, I see that you've retained counsel today,  
3       correct?  
4   A.    That's correct.  
5   Q.    Other than your counsel, have you spoken with  
6       anyone in preparation for this deposition?  
7   A.    Certain members of my department. We happen to  
8       eat lunch together.  
9   Q.    When was that?  
10  A.    Well, most of this week, most of last week. I  
11       mean, we did not specifically sit down to  
12       discuss anything there, but members of my  
13       department would say to me, well, when exactly  
14       is it that the department is to be deposed, and  
15       we would say Wednesday, Thursday, and Friday of  
16       this week. Did we discuss issues, the answer is  
17       no.  
18  Q.    That's what I was going to ask you, did you put  
19       your heads together to try to recollect events?  
20  A.    No.  
21  Q.    How about apart from your colleagues in the  
22       science department, did you speak with anyone  
23       else in preparation for the deposition?  
24  A.    No. I had several members of the staff ask us  
25       when the depositions were to occur, but that was

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- 1       the extent of the discussion.  
2   Q.    How about reviewing documents in preparation for  
3       the deposition, did you review documents?  
4   A.    I looked over my time line which I have in front  
5       of me. I looked over the statement that I read  
6       to the board in October. I looked over the  
7       history of the ordering of the textbooks. And I  
8       also looked over the curriculum in relationship  
9       to the Pennsylvania state standards.  
10  Q.    I take it that you've provided all those  
11       documents in response to the subpoena?  
12  A.    Yes, we did.  
13  Q.    Thank you very much. Just with respect to that  
14       subpoena, Bert, it seems to me that my  
15       understanding is that science department  
16       teachers as a whole collected information as a  
17       group which they provided in one set.  
18  A.    That is correct.  
19  Q.    For the most part.  
20  A.    That is correct.  
21  Q.    And then today you have kindly provided me with  
22       some additional materials, a small clip of  
23       documents, which reflect communications with  
24       news media personnel?  
25  A.    That is correct.

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- 1 Q. And some other materials in a box there which I  
2 understand to be e-mails that came to Dover  
3 schools relating to this dispute which you got  
4 off the computer system?  
5 A. I was given them, hard copies from the website.  
6 Some of them came to me personally at my  
7 address, but they are all of the e-mails that I  
8 received concerning this issue.  
9 Q. Just to be sure on that score, have you checked  
10 your home computer for any documents that might  
11 relate to the--  
12 A. I do not use my home computer for anything  
13 related to school.  
14 Q. Good. So you're pretty sure that this is a  
15 complete collection of documents?  
16 A. To the best of my knowledge.  
17 Q. Again, just to be sure, did you talk with any of  
18 the plaintiffs in this case in preparation for  
19 your deposition?  
20 A. Not in preparation for the deposition. I have  
21 spoken to Mr. Bryan Rehm on occasion. He was a  
22 former physics teacher here. And we were  
23 looking for pieces of equipment that were in his  
24 room when he left. I could not find them. So I  
25 spoke to him to ask in which closet they may be

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- 1 found. But it did not involve anything related  
2 to this.  
3 Q. To make sure I understand, Mr. Rehm left the  
4 school district?  
5 A. At the end of last year.  
6 Q. Have you spoken with him since that time about  
7 the subject matter of this litigation by which I  
8 mean the purchase of the biology text, the text  
9 Of Pandas, the changes to the biology  
10 curriculum?  
11 A. The only thing I have spoken to him on, and it  
12 was a call from him to me, it had to do with his  
13 running for the school board election, and that  
14 was the issue that was discussed at the time,  
15 would my son who lives in the district put a  
16 sign in his yard.  
17 Q. Apart from that exchange, anything else?  
18 A. No.  
19 Q. Now, I understand from Jen Miller that you have  
20 spoken with plaintiffs' counsel in this case.  
21 Is that correct?  
22 A. That is correct.  
23 Q. Tell me when you spoke with them.  
24 A. Well, spoke or you mean via e-mail?  
25 Q. Well, very good. Let me make my question more

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- 1 precise, communicated with plaintiffs' counsel.  
2 A. The earliest time that I communicated with Eric  
3 Rothschild involved November. He had contacted  
4 me and indicated that there were some parents  
5 who were concerned in the district, would I  
6 supply him with some information that I had  
7 obviously through my department gathered, and he  
8 requested that I send that information to him,  
9 which I did so.  
10 Q. What did you send him at that time?  
11 A. There is a communication that you have in your  
12 documents that lists it all. I have it here in  
13 my own binder. If you would like me to, I will  
14 get it out and read it to you.  
15 Q. Well, if you have something that would refresh  
16 your recollection, please do.  
17 A. It is dated 11/8/04. It says, I sent the  
18 Pennsylvania state standards for teaching  
19 evolution, my filed materials regarding the  
20 whole curriculum development leading to the ID  
21 resolution, the draft of the guidelines for  
22 teaching ID given to teachers by Mr. Baksa, the  
23 textbook analysis of the Panda book, and the  
24 statement that I made at the October 18th  
25 meeting of the school board and the revised

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- 1 board policy on curriculum development.  
2 Q. Bert, it appears you've produced all those  
3 documents to me, correct?  
4 A. That's correct.  
5 Q. Did you have any conversations with  
6 Mr. Rothschild about those materials?  
7 A. He did ask me on several occasions to clarify  
8 what was written because we sometimes write  
9 notes on the side, and, you know, two to three  
10 years down the road trying to explain some of  
11 those notes to someone else. He did ask me  
12 about the clarification of what we perceive to  
13 be the change in the policy where before there  
14 was input from five different groups when the  
15 curriculum was changed. And in October the  
16 curriculum was changed virtually by the board  
17 and was basically given to us. He did ask about  
18 the past practice.  
19 Q. It seems your focus -- or he was focused on the  
20 policy-making process?  
21 A. Yes.  
22 Q. Apart from that, Bert, have you spoken with  
23 Mr. Rothschild about the subject matter of this  
24 litigation?  
25 A. Yes.

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- 1 Q. Tell me, what else have you spoken to him about?  
2 A. Most recently he called me and asked me to  
3 respond to the accuracy to a memo that came from  
4 Dr. Peterman, were the contents of that memo  
5 accurate, and I responded to him to the best of  
6 my knowledge, yes, they were.  
7 Q. Anything else?  
8 A. That was the most recent one. One time he did  
9 call us, the members of the science department,  
10 he had basically stopped to see us again about  
11 something. And they went to a board meeting,  
12 and we all sat together to basically determine  
13 the nature of the community and the nature of  
14 the board at a board meeting.  
15 Q. Do you think that was in December 2004?  
16 A. It was at the end of the year. I don't know if  
17 it was in November or December specifically.  
18 Q. Anything else?  
19 A. Not that I can think of.  
20 Q. How about any other plaintiffs' counsel?  
21 A. We met with Paula. As a matter of fact, two  
22 different contingents of the science department  
23 met with Paula concerning some clarification of  
24 issues, and that was not too long ago. I have  
25 to hunt my paper here.

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- 1 Q. Consulting your time line?  
2 A. Yes. That was on the 22nd of April, Rob, Jen,  
3 and I met with Paula for background  
4 clarification. And then on the 28th Bob Linker,  
5 Leslie Prall met with Paula for the same reason.  
6 Q. On the 22nd meeting what did you discuss with  
7 Paula?  
8 A. Certain-- She had some questions concerning  
9 background of the documents that she had  
10 received. I'm not specifically sure what issues  
11 there were but asked for our clarification or  
12 our understanding of whatever was there.  
13 Q. When you referenced documents she received, are  
14 those documents you produced in response to a  
15 subpoena served on you by the plaintiffs? I see  
16 you're looking at Paula.  
17 A. They are the same documents that we gave to the  
18 Thomas More Law Firm that then went to Tom  
19 Scott, and I am assuming they then went to them.  
20 Q. That's the thrust of my question.  
21 A. I did not give it to them.  
22 Q. Good enough. There's no secret. I just wanted  
23 to make sure it's the same set of documents  
24 we're all looking at.  
25 A. I think so.

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- 1 Q. Well, let me ask you, who collected the  
2 documents to hand over to Paula?  
3 A. Jen Miller, Rob Eshbach, and I were given a day  
4 off from school to basically compile what is  
5 basically this together, and we basically worked  
6 roughly 24 hours to get it together so that it  
7 was basically given to the administration, and  
8 they disseminated the information.  
9 Q. Do you remember any particulars of your exchange  
10 with Paula relating to the documents?  
11 A. Not specifically. I do not.  
12 Q. Did you speak with Paula, and we're referencing  
13 Paula Knudsen, plaintiffs' counsel, did you  
14 speak with her on more than one occasion?  
15 A. I believe she was in attendance when we went to  
16 the board meeting, now when that was in November  
17 or December, and then again on the 22nd is the  
18 only time I remember speaking to her.  
19 Q. How about any other plaintiffs' counsel that  
20 you've spoken with?  
21 A. No.  
22 Q. How about any communications with the NCSE, have  
23 you been in contact with the National Center for  
24 Science Education?  
25 A. Is that the one that's out of California?

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- 1 Q. I believe it is.  
2 A. And Nick whatever the name is with an M?  
3 Q. Matske.  
4 A. Yes. Have I been in communication with him, I  
5 have received e-mails from him, and they are in  
6 the packet of e-mails which are in the box.  
7 Have I been in any personal communication, the  
8 answer is no.  
9 Q. Thank you. How about an organization NSTA?  
10 A. National Science Teachers Association, I am a  
11 member of the National Science Teachers  
12 Association. I also received an e-mail at  
13 school from that organization. I have not yet  
14 been personally in contact with them.  
15 Q. I'm going to ask you a few questions about--  
16 Well, let me ask you, have you contacted or  
17 communicated with any former board members in  
18 preparation for the deposition?  
19 A. Not in preparation for the deposition, but I  
20 have spoken to former board members.  
21 Q. We'll get to that I guess as we go. Well, let  
22 me ask you, have you spoken with former board  
23 members since the lawsuit was filed?  
24 A. Yes.  
25 Q. Who have you spoken with?

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- 1 A. Barrie Callahan. She had called me to ask if  
2 any member of the science department had  
3 videotaped the presentation that Dr. Behe did in  
4 the school district from, I don't know, 11 to 12  
5 on whatever that open house day was.  
6 And I had indicated to her that none of the  
7 members of the department had. I believed that  
8 the school district had done so and she would  
9 have to inquire as to what procedure would be to  
10 get that. But that was the contact that I had  
11 with Mrs. Callahan.  
12 Q. Apart from that contact with Ms. Callahan, have  
13 you had any other communications with her since  
14 the lawsuit was filed?  
15 A. Not since the lawsuit was filed. I remember she  
16 had sent me some information, background  
17 information or research, having to do with  
18 creationism and evolution and whatever, but that  
19 was early in fall. That was prior to the  
20 December 15 filing of the lawsuit.  
21 Q. Early in the fall of 2004?  
22 A. Yes.  
23 Q. Were they printed materials?  
24 A. Yes, they were printed materials. I believe  
25 they are in the packet that you have that is

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- 1 labeled research.  
2 Q. How about prior to that communication-- We'll  
3 set that aside for now. Any other  
4 communications with former board members?  
5 A. I have spoken to Casey Brown. She had called to  
6 inquire of me, and this had nothing to do with  
7 the lawsuit, but it had to do with the biology  
8 book. When we were basically preparing to  
9 select a biology book, she had some questions  
10 regarding both the new biology text that we were  
11 proposing and the new chemistry text. And I  
12 answered those questions because at that point  
13 she was on the curriculum committee.  
14 Q. What were the questions that Casey Brown had  
15 about the biology text?  
16 A. Basically what differences appeared between the  
17 1998 edition and the 2002 edition. Most often  
18 she would ask of me the difference in the  
19 chemistry text because obviously biology is not  
20 my field of expertise.  
21 And it had to do with her commenting on the  
22 fact that the problem presentation in the new  
23 version that we wanted to get was easy enough  
24 that she could understand it. And she thought  
25 that this would probably be very good for

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1 students, and she was very supportive of the  
2 selection of the chemistry text that we had.

3 Chemistry is not usually very  
4 controversial. I mean, it's pretty cut and dry  
5 with the math. But she had, you know, asked  
6 some things as to where they differ, why we  
7 changed book publishers, why we changed book  
8 authors. And we -- I was happy to point that  
9 out to her for clarification.

10 Q. How about any conversations with Angie Yingling?

11 A. I have never had a conversation with Angie  
12 Yingling.

13 Q. Jane Cleaver?

14 A. No.

15 Q. Noel Wenrich, have you spoken with him about the  
16 subject matter of this dispute?

17 A. I have spoken to Noel after a board meeting.  
18 Actually it was after the board meeting where I  
19 read my statement. He came up to me afterwards  
20 and gave me a hug and said, I'm sorry things  
21 went the way they went. That was the extent of  
22 the conversation.

23 I have worked with Mr. Wenrich when he was  
24 on the board having to do with the design of the  
25 new science labs. We had discussions on where

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1 things should go, what should be the design of  
2 the tables. But that basically had to do with  
3 the new building project, nothing to do with  
4 this.

5 Q. So it seems you've never discussed the biology  
6 text, biology curriculum issue with--

7 A. No.

8 Q. How about any of the current board members, have  
9 you spoken with them personally about the  
10 subject matter of this dispute, the selection of  
11 the biology text, the Of Pandas text, the change  
12 to the curriculum?

13 A. We were called into meetings with the curriculum  
14 committee. The curriculum committee at that  
15 time was Mrs. Harkins, Mr. Buckingham, and Casey  
16 Brown. So in those meetings we certainly held  
17 discussions but certainly not outside the forum  
18 of-- No.

19 Q. Very good. I mean, we'll get to those, as you  
20 know.

21 A. Right.

22 Q. Likewise, communications with Mr. Bonsell  
23 limited to communications in connection with  
24 meetings of the board curriculum committee?

25 A. That's correct, yes, involving the board

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- 1 curriculum committee. He sat in on some of the  
2 curriculum committee meetings as president of  
3 the school board. He was not actually a member  
4 of the committee. I believe he presently now is  
5 the chair of that committee.
- 6 Q. I'm going to ask you a few questions just to  
7 explore any connections you might have with some  
8 of the persons involved in this dispute. Do you  
9 have any relations by blood or marriage to  
10 anyone who's been on the Dover Area School  
11 District School Board since December 2002?
- 12 A. No.
- 13 Q. How about anyone that's served in the  
14 administration for the school district?
- 15 A. No.
- 16 Q. How about any other employees of the school  
17 district?
- 18 A. There are other employees of the school district  
19 whose last name are Spahr. I do not know if  
20 there is a distant relationship but not as far  
21 as I know.
- 22 Q. Good enough. How about any business dealings,  
23 did you have any business dealings apart from  
24 your employment with the school district with  
25 anyone?

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- 1 A. No, I did not.
- 2 Q. Anyone in the administration?
- 3 A. No.
- 4 Q. Any shared memberships in fraternal or community  
5 organizations with anyone that's been on the  
6 Dover Area School District School Board since  
7 January 2000?
- 8 A. Would you clarify that. Are you talking about  
9 Lions Club?
- 10 Q. Yes, things like that.
- 11 A. No, I am not, no.
- 12 Q. How about same thing for the administration,  
13 same question.
- 14 A. There are some professional organizations that I  
15 belong to that I have no knowledge whether they  
16 belong to as well.
- 17 Q. Good enough. How about do you have any  
18 relationship outside your relationship as a  
19 teacher and member of a union with Sandy Bowser?
- 20 A. Sandy Bowser is one of the older members of our  
21 staff, and my primary connection to her is I am  
22 chair of the meet and discuss committee for the  
23 association, and so we have regular meetings in  
24 which she is in attendance. I do not have a  
25 social relationship with her outside the school

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- 1 district.  
2 Q. Bill Miller, same question.  
3 A. No.  
4 Q. Brad Neal?  
5 A. No.  
6 Q. Now, we know, Bert, both you and I, what brings  
7 you here today, and so I want to try and just,  
8 as I say, watch that story unfold from your  
9 perspective.  
10 We have here a set of documents which is  
11 part of the teachers' production which we used  
12 yesterday when we were working with Jen Miller.  
13 And what I want to do is just let you take a  
14 look at those. It might be easier if we laid  
15 them out.  
16 The first thing I'd like you to do is to  
17 focus on the period before January 2002, and I  
18 know that seems a long way off. And I just want  
19 to ask, prior to that time, prior to  
20 January 2002, was the biology text or the  
21 biology curriculum an issue in your -- let me  
22 ask you, in your experience as a teacher at  
23 Dover Area School District?  
24 A. Are you asking me when we previously ordered a  
25 biology textbook did this controversy ever come

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- 1 up to light?  
2 Q. Well, yes. Let me ask you this by way of  
3 background, when did you start work at Dover  
4 Area School District, Bert?  
5 A. 1965 to '66. I have been here for 40 years.  
6 Q. I will say that every witness has demonstrated  
7 considerable respect for you, Bert. That's a  
8 long time.  
9 A. Yes, it is.  
10 Q. Were you hired on as a biology teacher?  
11 A. I am not a biology teacher.  
12 Q. Oh, chemistry.  
13 A. My only certification is chemistry.  
14 Q. Chemistry.  
15 A. Yes. My first year is the only year I taught  
16 physics, Chem I, and Chem II.  
17 Q. Now, when did you become head of the science  
18 department?  
19 A. About ten years ago after the retirement of  
20 Mr. Glass.  
21 Q. Mr. Glass?  
22 A. Yes, Mr. Larry Glass.  
23 Q. Ten years ago, so what's that, '95?  
24 A. It might be 10, 11, but it's certainly around 10  
25 years ago.

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- 1 Q. Now, prior to your becoming chair of the  
2 department, would you be involved in the process  
3 of selecting the biology text?  
4 A. No.  
5 Q. Biology curriculum?  
6 A. No.  
7 Q. So let's look at the period from your tenure as  
8 head of the department up through 2002. You get  
9 the gist of my question. During that period  
10 when biology texts came up for selection where  
11 the biology curriculum was worked on or  
12 discussed, were the issues that are the subject  
13 matter of this litigation, the presentation of  
14 evolutionary theory, a possible purchase of  
15 other texts or presentation of other theories or  
16 subject matter, did they ever come up in that  
17 period of time?  
18 A. Not to my knowledge.  
19 Q. There's a few e-mails I just want to ask you  
20 about. If you would, Bert, please direct your  
21 attention to the exhibit marked Miller 5. And  
22 back towards I'd say two-thirds of the way  
23 through that packet of document there's an  
24 e-mail from Robert Hamilton to you dated  
25 December 15th, 2004, and the subject is,

00025

- 1 Various.  
2 A. Got it.  
3 Q. And then to save us time, I'll ask you to look  
4 at Miller 6, and a third of the way through the  
5 pack you'll see another e-mail from  
6 Mr. Hamilton. It's dated March 28th, 2005 with  
7 the subject, I have not forgotten.  
8 MS. PENNY: We have the two e-mails in  
9 front of us.  
10 BY MR. GILLEN:  
11 Q. Now, I wanted to ask you a few questions about  
12 Mr. Hamilton. I don't know, he's a fairly new  
13 character. Who is he?  
14 A. Mr. Hamilton was a former member of the biology  
15 department, and his role was to teach  
16 technoscience which is now our present  
17 environmental course, and he taught honors  
18 biology.  
19 He then went from the science department  
20 into the administration and became our principal  
21 of the high school. I had the pleasure of  
22 teaching a course on the ecology of Bermuda with  
23 Mr. Hamilton in the summer with 20 of our  
24 students, great honors bio man.  
25 Q. Really?

00026

- 1 A. Yes, very much so.  
2 Q. Was that course in Bermuda?  
3 A. Yes, nine days. We stayed at the Bermuda  
4 Biological Station for Research.  
5 Q. What I'm interested in is did Mr. Hamilton ever  
6 discuss with you incidents that he thought were  
7 related to this dispute?  
8 A. Not until after the fact and basically this memo  
9 that-- And I'm not sure discuss was the word.  
10 I received the memo, okay, and in the memo, as  
11 you see highlighted in the second paragraph, he  
12 indicates, which we had gotten some rumblings  
13 of, that there was some concern among board  
14 members concerning this evolution presentation  
15 in the biology curriculum. It was as far as we  
16 knew at that point in time with his tenure  
17 handled in his administrative office. We did  
18 not have meetings with him with board members  
19 present on this issue.  
20 Q. Did he give you any other details about--  
21 A. No, he did not other than what's written right  
22 here.  
23 Q. It seems, Bert, from your answer that you didn't  
24 discuss it in further detail with him?  
25 A. No, I did not.

00027

- 1 Q. Do you know if any member of the science  
2 department did?  
3 A. No, I do not.  
4 Q. It seems from what you've said that whatever  
5 Mr. Hamilton is referencing in this e-mail--  
6 And for the record, I'll say you're referencing  
7 the e-mail dated 12/15/2004. Is that correct?  
8 A. That's correct.  
9 Q. --was news to you at that time?  
10 A. Certainly as it is presented here it was news  
11 that, you know, there have been some board  
12 concerns which because he was a biology teacher  
13 I'm sure he felt quite capable of answering and  
14 handling himself. And, therefore, it certainly  
15 did not come to me because I'm chemistry. Now,  
16 whether it went to other members of the biology  
17 department that are no longer with us I cannot  
18 answer.  
19 Q. It indicates or makes reference to his  
20 principalship. When did he become principal, do  
21 you know?  
22 A. That I can't answer.  
23 Q. That's fine. When did he leave again?  
24 A. Well, Mr. Riedel is there this year.  
25 Dr. Peterman was there for two years, so it

00028

- 1 would have been four years ago. I'm not sure of  
2 the exact dates, but it was four years ago.
- 3 Q. That's quite all right. Don't worry about it.  
4 If we look at Miller 6, again, there's another  
5 e-mail from Mr. Hamilton in which he is seeking  
6 your peanut brittle recipe among other things.  
7 Did you ever have a discussion with Mr. Hamilton  
8 in connection with this e-mail?
- 9 A. He came to my home to pick up the peanut brittle  
10 recipe. He did indicate that he certainly will  
11 think about us over this issue because he is at  
12 heart a biology teacher. Did we discuss any  
13 particulars of the situation, not really other  
14 than he was certainly supportive and he will  
15 always keep us in his thoughts.
- 16 Q. In your capacity as head of the science  
17 department, did you ever have occasion to  
18 discuss with Mr. Hamilton the manner in which he  
19 presented evolutionary theory?
- 20 A. No, I did not.
- 21 Q. We're up through 2002, and it seems like at  
22 least so far as you were concerned based on your  
23 personal knowledge, things you heard or saw and  
24 so on, the biology curriculum wasn't an issue of  
25 controversy up to that period?

00029

- 1 A. I mean, you always-- We always had people in  
2 the community, because it's a very conservative,  
3 religious community, that when, you know,  
4 evolution was brought up would always ask  
5 questions or whatever. But we always tried to  
6 take a middle of the ground road that we did not  
7 offend many people.
- 8 Q. Well, let's talk about that, Bert, just look at  
9 it in the period-- Well, let's look at  
10 community concerns generally prior to 2003.
- 11 A. Okay.
- 12 Q. Tell me how those concerns came to your  
13 attention.
- 14 A. They were never called to me in terms of my  
15 attention. We were always very aware, though,  
16 of the varying groups within the community and  
17 simply took a very cautious presentation. Now,  
18 I do not teach biology, so if you are asking me  
19 exactly how it was taught, I can't respond to  
20 that.
- 21 Q. And I'm not. I think I'm understanding better  
22 now. Do I understand you correctly that you're  
23 saying teachers in the science department knew  
24 that they were teaching in this particular area  
25 had a sense for the cultural environment?

00030

- 1 A. That's correct.  
2 Q. And then also an appreciation for the cultural  
3 dimensions of this theory. Is that right?  
4 A. That's correct.  
5 Q. And they endeavor to be sensitive to those  
6 considerations?  
7 A. That's correct.  
8 Q. If we look at the period prior to 2002, do you  
9 recall any discussions with your teachers, your  
10 science teachers, that were focused on the ways  
11 in which they demonstrated that sensitivity to  
12 the cultural context in which evolutionary  
13 theory was presented?  
14 A. No.  
15 Q. So now we're in January 2003. Tell me, Bert,  
16 did the subject matter of this litigation,  
17 selection of the biology text, some controversy  
18 surrounding that, or some concern expressed  
19 relating to the presentation of evolutionary  
20 theory, did they come to your attention during  
21 2003?  
22 A. 2003 was our year to order the new biology  
23 textbook. We traditionally send our budget to  
24 the administration and the board in January for  
25 the following year. Since it was our cycle to

00031

- 1 order books, the proposed new biology book where  
2 the biology teachers individually and together  
3 reviewed various textbooks and their  
4 recommendation was this at that point 2002  
5 Miller and Levine biology book. That was sent  
6 basically to the administration. We were told  
7 it was going to be delayed a year because the  
8 books that we had were still in relatively good,  
9 usable condition.  
10 We at that point took them at word that  
11 that really was the reason that it was being  
12 held up. In looking back now, we do question  
13 whether there were other things behind it.  
14 There was apparently some board interest,  
15 okay, later on in the spring of 2003 which did  
16 not get to the department, okay, where some  
17 people either in the community or on the board  
18 raised questions beginning with this evolution  
19 issue.  
20 Q. Let's get to that. You say there was apparently  
21 some board interest?  
22 A. I cannot be specific because it did not come to  
23 the attention of the department until we got to  
24 the fall of 2003. So it apparently had calmed  
25 down somewhat. But then it was revisited in the

00032

1 fall, and then we as a department addressed the  
2 questions and the concerns.  
3 Q. Now, if I understand you correctly, Bert, you're  
4 kind of inferring from the fall 2003 events that  
5 the problem didn't just pop up in the fall of  
6 2003?  
7 A. No, it did not.  
8 Q. Why do you say that, Bert?  
9 A. And I'm not exactly sure to whom the gentleman  
10 spoke that had the concerns, but in the spring I  
11 think there were some questions either regarding  
12 the selection of the book that we had done or  
13 how evolution is taught in the classroom, how it  
14 is presented. But then in the fall, and it was  
15 early in the fall, we sat down. There is a lot  
16 of confusion between origin of life and origin  
17 of species.  
18 Q. Are you referencing to the fall meeting, Bert?  
19 A. Well, but this is-- When people see evolution,  
20 they don't always see evolution the way it is  
21 taught in the biology curriculum here. They  
22 have their own concept of what they think it is.  
23 And, you know, you have parents who will, you  
24 know, raise-- And they have every right to do  
25 so.

00033

1 And when asked, the science department will  
2 sit down and attempt to clarify those issues  
3 since that is their training. So we think this  
4 started in the spring. We went home for the  
5 summer. We weren't getting the new book. So it  
6 pretty much went to rest until we got to the  
7 fall.  
8 Q. And all I'm trying to get at, Bert, is you have  
9 this sense, as you say, we think it started in  
10 the spring. And we're going to talk about the  
11 memo from Peterman. Is that what you're relying  
12 on to give you the sense that something was  
13 going on in the spring?  
14 A. Well, that was certainly part of it. But that--  
15 If you look at that memo, that was in 2003.  
16 That was in March and April. Yes, that's where  
17 we got the idea, yes, yes.  
18 Q. Why don't we--  
19 A. But we didn't have a meeting-- If you're asking  
20 me did we have a meeting over it, the answer  
21 was, no. The meeting occurred in the fall.  
22 Q. Let's look at that memo which is what, Miller 1.  
23 Take a minute to look that over, Bert, although  
24 I have reason to believe you're fairly familiar  
25 with it.

00034

- 1 A. I am.  
2 Q. Did you receive a copy of this memo from  
3 Dr. Peterman?  
4 A. Not to my knowledge.  
5 Q. Did you ever speak with Dr. Peterman about not  
6 having received a copy of the memo?  
7 A. No, I did not.  
8 Q. Let me ask you, were there any other occasions  
9 in which Dr. Peterman created memos, copied you,  
10 but didn't send you the copy?  
11 A. I can't answer that. I have an entire file of  
12 Dr. Peterman memos that are numbered from one up  
13 to whatever from the tenure when she was here.  
14 I actually looked in that folder thinking it may  
15 have been there, but I usually filed everything  
16 on this issue in a file that was labeled as  
17 such. I did not have that in my file.  
18 Q. No other occasions have come to light such as  
19 this where a memo that's directed to you has  
20 later come to light and you've looked in your  
21 file and found, gees, I didn't get that?  
22 A. Not often. This memo was seen, though, by  
23 another member of my department. The evening, I  
24 don't know, that she may have written it, she  
25 had come to my room. I had left for some reason

00035

- 1 early, and another young staff person who was  
2 working there in the evening remembers seeing  
3 this memo.  
4 Q. That staff member's name?  
5 A. Rob Eshbach.  
6 Q. I take it he's told you he specifically recalls  
7 seeing this document?  
8 A. Yes. Yes, he has.  
9 Q. Did he tell you any particular reason why he  
10 recalls seeing it?  
11 A. Yes. He remembered the enumerations one, two,  
12 three, four, and five which is strange, but  
13 that's what he remembered, looking down and  
14 seeing that.  
15 Q. Did he have the memo, do you know? Did he have  
16 a copy of the memo?  
17 A. I don't know that.  
18 Q. If you look at it, Bert, as you know, it  
19 recounts a conversation -- or it's Dr. Peterman  
20 giving her account of a discussion she had with  
21 you concerning the discussion -- or concerning  
22 evolutionary theory. And in it, it says that  
23 Mr. Baksa mentioned that a board member wanted  
24 creationism taught. Do you recall that, Bert?  
25 A. Yes.

00036

- 1 Q. Do you recall Mr. Baksa using the term  
2 creationism?
- 3 A. I remember the word creationism being used, yes.
- 4 Q. And I could see that. What I'm asking you, do  
5 you recall Mr. Baksa saying that a board member  
6 wanted creationism taught as opposed to, you  
7 know, it coming up in the conversation?
- 8 A. I remember Mr. Baksa saying that a board member  
9 wanted creationism taught. Now, I'm not sure  
10 50 percent was there. I think it was of equal  
11 time when the evolutionary issue was presented  
12 in biology classes.
- 13 Q. Do you recall Mr. Baksa mentioning a board  
14 member wanting other theories taught?
- 15 A. Not to my knowledge.
- 16 Q. Do you recall anything else of your-- Apart  
17 from this memo, do you have a recollection of  
18 your discussion with Mr. Baksa?
- 19 A. Yes.
- 20 Q. Do you recall anything else other than the  
21 statement we've just discussed?
- 22 A. I remember asking Mr. Baksa, may I ask you which  
23 board member has indicated this to know where  
24 the red flag was coming from and are we going to  
25 be prepared, and he responded to me it was

00037

- 1 Alan Bonsell.
- 2 Q. Apart from these features of this conversation,  
3 do you remember anything else?
- 4 A. No. But I think Mr. Baksa had indicated to me  
5 and my science department that this was  
6 obviously going to be a concern that we are  
7 going to have to address sometime soon.
- 8 Q. Now, if you continue down that first paragraph  
9 there, about halfway through there's a sentence  
10 that begins, she, referencing you, explained to  
11 Mr. Baksa that all biology teachers state that  
12 another theory of evolution is creationism, but  
13 creationism per se is not taught since it is not  
14 addressed by the standards. Now, how about  
15 that, Bert, do you recall telling Dr. Peterman  
16 that?
- 17 A. Yes, I do.
- 18 Q. Now, it looks like in order to get that  
19 information you had some discussions with your  
20 science faculty about the issue. Tell me, what  
21 was the basis for that statement or account in  
22 this memo?
- 23 A. Since we are a standards-driven institution and  
24 there was always the controversy even in terms  
25 of getting the state standards over this

00038

1 evolutionary issue, we followed the standard  
2 which I believe is listed under biology letter D  
3 that said that the theories of evolution need to  
4 be taught because in the year 2006 or 7 there's  
5 going to be the PSSA test which is going to  
6 address these issues.

7 But to present a fair evaluation, they also  
8 said that there are other theories out there;  
9 namely, creationism. And they all mentioned it  
10 and said we encourage you to go to your pastor  
11 of your church or your family if you want a  
12 discussion of that. And that was as much that  
13 was ever done.

14 Q. When you say they, are you referencing your  
15 biology teachers?

16 A. I am referencing the biology teachers. There  
17 would be no other subject that would--

18 Q. Implicate this concern?

19 A. That's correct.

20 Q. Now, who had you spoken with in order to get  
21 that information, Bert, about the way in which  
22 creationism was presented in the classroom in  
23 connection with the presentation of evolutionary  
24 theory?

25 A. When we had various department meetings and

00039

1 in-service days and we had all of the waiting  
2 for these state standards and we were in the  
3 process of rewriting our curriculum to match the  
4 state standards, the subject came up. And the  
5 group; namely, Jen Miller who was obviously the  
6 veteran biology teacher, agreed that this is the  
7 way we would all do it so that there would be  
8 consistency in basically how it was presented.

9 Q. What did Jen say on that point?

10 A. That we would simply mention that creationism  
11 was an alternate theory to Darwin's theory of  
12 evolution and that we request that the churches  
13 or if the families be able to present their own.

14 Back then students could literally ask  
15 questions, and at that point the biology  
16 teachers were comfortable in addressing these  
17 issues. And, you know, the major reference was  
18 please contact your own family, your pastor, you  
19 know, or there are other reference books  
20 available if you have those concerns. And it  
21 was a very non-threatening situation at that  
22 point.

23 Q. Sure. And it seems that you're saying that the  
24 teachers are trying to just address any  
25 questions or curiosities the student might have?

00040

- 1 A. Back then, yes.
- 2 Q. You say back then. You say things are different  
3 now?
- 4 A. Yes, because now the issue obviously is not even  
5 addressed. You know, we teach what is necessary  
6 for the state standards, and then they go on.
- 7 Q. When you say the issue is not addressed, Bert,  
8 what are you getting at?
- 9 A. We don't talk about creationism. I'm not even  
10 sure creationism is ever mentioned in the  
11 classroom anymore, although I am not in a  
12 biology classroom. You would have to ask a  
13 biology teacher that question.
- 14 Q. Now, if you continue to the next paragraph,  
15 Bert, there's a couple sentences there. I know  
16 you can read them, but I'll read them for the  
17 record. It continues, in asking for direction  
18 in this matter, I have advised all Biology I  
19 teachers to teach the approved school board  
20 curriculum for Biology I. I advised them to  
21 continue to mention that creationism is another  
22 alternate theory of evolution. And then she  
23 says, however, as principal, I am uncomfortable  
24 with this topic and so on. Do you recall  
25 Dr. Peterman so advising you?

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- 1 A. Yes.
- 2 Q. What did Dr. Peterman say?
- 3 A. She basically directed me to direct the biology  
4 teachers to continue with what had been past  
5 practice, that you would teach evolution, you  
6 would mention that creationism was an  
7 alternative theory, and then request that the  
8 families or the churches handle any explanations  
9 that they would have since there are so many  
10 different religious backgrounds in this  
11 community.
- 12 Q. Do you recall anything else that Dr. Peterman  
13 said to you relating to this issue?
- 14 A. I remember we had some discussions as to what  
15 her concerns were if we decide that we are going  
16 to teach creationism or it's going to be  
17 something that's going to have to have equal  
18 time with the evolution.
- 19 Number one, there was a time constraint.  
20 That was another issue because it basically  
21 comes at the very end of the semester. If  
22 you've had snow days, you may not even get to  
23 the issue. And now where are we going to find  
24 the time to put in these additional things.  
25 And the science teachers felt somewhat

00042

1 uncomfortable because they are not trained in  
2 religious education. They are trained as  
3 biologists but felt that they would not  
4 necessarily have the background to do what would  
5 be an appropriate job.

6 And as she pointed out, and she actually  
7 said to me, which theory of creationism are you  
8 going to teach and not offend somebody who is  
9 sitting in the room. So that discussion did  
10 come up.

11 Q. Apart from what you've told me that you remember  
12 today, anything else come up with Dr. Peterman  
13 that touched on this issue during her tenure as  
14 principal?

15 A. Oh, I'm sure it did because when there was an  
16 issue, whether it be are we going to get our  
17 textbooks, when are we going to get our  
18 textbooks, I always followed chain of command,  
19 and I went from department chair to Dr. Peterman  
20 who would then in turn sometimes go to Mr. Baksa  
21 who was head of curriculum.

22 But, yes, we discussed issues. I'm certain  
23 I said to her what is the holdup with this  
24 biology book since this had never been a problem  
25 before.

00043

1 And the interesting thing about it was it  
2 was simply a new edition of the book that we had  
3 already had, and it was approved. We had the  
4 Miller and Levine book, but it was a 1998  
5 edition. And so we were simply asking for a  
6 newer, more modern copy of it. So we didn't  
7 realize that there was going to be any  
8 controversy.

9 Q. Now, I just want to make sure, Bert, it seems  
10 like-- Well, Peterman left when? Did she leave  
11 in 2003, can you recall?

12 A. It was the end of the last school year.

13 Q. So that's 2004?

14 A. She was there 2003-2004. Mr. Riedel came at the  
15 beginning of this year, although you might want  
16 to--

17 Q. To check, that's fine.

18 A. I think it was the end of last year.

19 Q. I'm not going to hold you to the dates. I'm  
20 just trying to get a sense because it seems to  
21 me--

22 A. She was there two years.

23 Q. It seems to me from what you're saying that the  
24 holdup of the books, that's the holdup that  
25 occurred in 2003, correct?

00044

- 1 A. The books were just ordered at the last minute  
2 in August of 2004, right. We got them for the  
3 school year.
- 4 Q. You'll see in this Exhibit Miller 1 there's a  
5 number of enumerated points. Would you take a  
6 quick look at those for me, Bert. You've  
7 referenced that Dr. Peterman had some concerns.  
8 Looking through those numbered items, one  
9 through five, do you think that fairly  
10 summarizes the concerns that Dr. Peterman  
11 expressed to you?
- 12 A. Yes, I do.
- 13 Q. If you look beneath that enumeration, there's a  
14 new paragraph which begins, in the public school  
15 arena creationism-- Forgive me, it doesn't  
16 begin this way. The second sentence says, in  
17 the public school arena creationism must always  
18 be mentioned as an alternate theory, but public  
19 school teachers are teachers of their content  
20 area and are not to be perceived as teachers of  
21 religious instruction. Do you recall  
22 Dr. Peterman making statements to you to that  
23 effect during the conversations you had with  
24 her?
- 25 A. I remember on one occasion she certainly brought

00045

- 1 that up. I don't know whether it was on this  
2 particular one. But she did show concern that  
3 we are teachers of biology and certainly not  
4 teachers of religion and this could be a  
5 problem. Yes, she did bring that up.
- 6 Q. Have you had any discussions with your biology  
7 teachers about whether they reference  
8 creationism currently?
- 9 A. No, I have not. It is my understanding that  
10 since the statement was read I'm not even sure  
11 the reference is made anymore, but you would  
12 have to ask the biology teachers that.
- 13 MR. GILLEN: Let's take a brief break.  
14 (Recess taken)
- 15 BY MR. GILLEN:
- 16 Q. Bert, as we broke off, you were making some  
17 observations about the text purchase process and  
18 holding up the text in 2003. And with that in  
19 mind, I'd like you to look through the packet of  
20 documents that's been marked Miller 5.  
21 Flip back to some notes, handwritten notes,  
22 that at the top of the first page have notes  
23 from Bert Spahr. I ask you, Bert, to just look  
24 at the first two pages of those notes I've just  
25 referenced which relate to a meeting and which

00046

1 are dated 1/21/05 in the upper left hand corner  
2 across from the first entry.

3 A. 1/21/05.

4 Q. You got it, Bert?

5 A. Yes.

6 Q. Having looked those over, Bert, do you have any  
7 recollection of a discussion relating to text  
8 usage?

9 A. Yes, I do.

10 Q. Tell me what you recall -- let me be more  
11 specific -- in the 2003 period.

12 A. Mr. Baksa had asked us about a question that I  
13 believe came from a board member indicating that  
14 we had not used the textbooks, and he was asking  
15 us why the textbooks were not used. And they  
16 were referring to the 1998 edition of the Miller  
17 and Levine biology book.

18 And we attempted to explain that in the one  
19 year when we switched what was going to be  
20 taught in the science curriculum we had all  
21 ninth grade and all tenth grade students taking  
22 biology at the same time. Now, this was only  
23 going to occur for one year. We did not have  
24 enough textbooks to give each student a copy.  
25 We would not have presumed to ask the board to

00047

1 buy additional textbooks to be used for one  
2 year. And so consequently textbooks were not  
3 assigned to each student.

4 It was also after that that we instituted  
5 the environment and the ecology curriculum as  
6 the new required course for tenth grade. So we  
7 had the one-year time frame in which roughly  
8 probably 400 students were taking biology. We  
9 did not have enough textbooks to pass out.

10 Therefore, most of the biology teachers  
11 with the exception of Mr. Eshbach had class sets  
12 of biology texts in the room for use by  
13 students. Mr. Eshbach did not have a full  
14 biology load. He was teaching another course.  
15 Therefore, he had enough to assign each student  
16 a text.

17 And that was why it was being questioned  
18 why did we not use the books that we had  
19 available. Number one, they would not have gone  
20 far enough. Secondly, when the curriculum was  
21 changed, we moved certain topics such as  
22 classification to the eighth -- or the seventh  
23 grade level at a different building. And,  
24 therefore, this book dealt a great deal with  
25 classification. And there were some other areas

00048

1 that did not address what we had now rewritten  
2 the curriculum to match the state standards  
3 with.

4 Q. So I just want to make sure I understand you,  
5 Bert. Your first point, does that relate to a  
6 year in which the state standards changed the  
7 year in which biology would be presented and  
8 Dover as a result compressed two years into --  
9 two class years for the purpose of presenting  
10 biology to try and bring themselves into  
11 compliance with state law?

12 A. I do not know in which year exactly the state  
13 standards were approved. There was-- And  
14 that's in the one packet. There was about a  
15 two-year time frame where we wrote it, and then  
16 we rewrote it, and then they had the discussion.  
17 And then finally it was approved.

18 During that time, we were in the process of  
19 realigning our curriculum within the two  
20 required course departments to match those state  
21 standards realizing that eventually we thought  
22 they would probably be passed. And it was in  
23 this from the roughly 2000 to 2005 -- actually  
24 2001 that we were actually trying to realign the  
25 classes. Prior to that time, earth science was

00049

1 taught as a required course.

2 Q. Does that touch on your second concern you've  
3 referenced which was the way in which the text  
4 jibed with the actual presentation of material  
5 in various classes?

6 A. That's correct.

7 Q. And there was sort of a disjunction between the  
8 text the department had at that time and the way  
9 in which the teachers were presenting specific  
10 subject matters?

11 A. That's correct.

12 Q. And really sort of the net result of that is  
13 various subject matters were being presented in  
14 a variety of classes instead of just biology?

15 A. That's true.

16 Q. Do you recall Barrie Callahan speaking at school  
17 board meetings about the biology text?

18 A. Yes, I do.

19 Q. Do you recall Barrie Callahan saying the kids  
20 don't have books?

21 A. Yes, I do.

22 Q. If I look at your-- Well, let me ask you, Bert,  
23 Miller 4 is a small set of documents, the second  
24 page of which has the number one circled in the  
25 upper right hand corner. And that is an

00050

- 1 approximate time line. Am I correct?  
2 A. That's correct.  
3 Q. Did you jot this down, Bert?  
4 A. That is my handwriting, yes.  
5 Q. And in compiling this document, did you consult  
6 with your colleagues in the science department,  
7 or was this your recollection? Was it kind of a  
8 collective work?  
9 A. It was a collective time line.  
10 Q. Well, I see next beneath the entry for  
11 January 2003 the next entry is fall 2003, and  
12 there's a reference to a meeting with  
13 Mr. Bonsell. What I want to ask you is, we've  
14 got a conversation with Dr. Peterman that's  
15 reflected in the memo dated April 1st, 2003, and  
16 we've got a fall meeting coming up here that  
17 we're going to talk about. In between April and  
18 this fall meeting, was there any discussion that  
19 you were privy to relating to the purchase of  
20 the biology text or the biology curriculum?  
21 A. Other than the discussion I had with  
22 Dr. Peterman after the discussion I had with  
23 Mr. Baksa.  
24 Q. Have you told me what you can recall about the  
25 discussion you had with Dr. Peterman?

00051

- 1 A. I have.  
2 Q. Good enough. Other than that then, there was  
3 really nothing until this fall meeting?  
4 A. There may have been some passing of bodies in  
5 the hall where we may have said, have you heard  
6 anything on our textbooks. But it's not a case  
7 where we had large meetings involving the  
8 department over this issue.  
9 Q. So we have a fall meeting with Mr. Bonsell.  
10 Tell me how that meeting came to your attention.  
11 A. I believe that meeting was at our suggestion.  
12 There was I believe for him some confusion over  
13 the issue of origin of species and origin of  
14 life. I believe--  
15 Q. I'm sorry, Bert, let me stop you there because  
16 that's interesting to me. You say the meeting  
17 was called at your suggestion and you believe  
18 you had some confusion. That seems to point to  
19 some discussion with Mr. Bonsell or some sense  
20 for Mr. Bonsell's position.  
21 A. I believe the discussion was between Mr. Bonsell  
22 and Mr. Baksa. And then Mr. Baksa came to me or  
23 to us -- I'm not exactly sure which one -- and  
24 we suggested to him maybe we could clarify the  
25 situation if the department and the biology

00052

1 teachers met with Mr. Bonsell and answered his  
2 questions and basically his concerns.

3 They're the experts in the field. I am  
4 not. I don't think Mr. Baksa's background is in  
5 biology either. And we felt that this would be  
6 a willing compromise to sit down with him and  
7 basically answer his questions and concerns.

8 Q. Let me understand you. Is the conversation  
9 you're referencing now the conversation we've  
10 discussed where you and Mr. Baksa talked?

11 A. Well, and it may have been one that came  
12 subsequent to that. I am not aware of that, but  
13 I think there was this ongoing question and  
14 concern that we felt we could resolve in the  
15 fall meeting. It was fairly early in the fall.

16 Q. I just want to make sure I understand how the  
17 story unfolds from your perspective. You know  
18 you had a conversation with Mike, and this memo  
19 seems related to that. As you sit here today,  
20 can you remember any other discussions with  
21 Mr. Baksa between April and the fall meeting?

22 And I guess what I'm trying to get at is,  
23 plainly the discussion that's reflected in some  
24 measure in this memo dated April 1, 2003 alerted  
25 you to a possible problem, as you say, red flag.

00053

1 Now, what I'm trying to get at is, I could  
2 see you having that in the back of your mind and  
3 carrying it with you through the summer and  
4 saying let's nip this in the bud or let's  
5 address it. Or another way of looking at things  
6 is Mike could have come to you periodically  
7 throughout and said, you know, have you thought  
8 of anything. Do you have any recollection of  
9 what happened in this period?

10 A. It was not uncommon for Mr. Baksa when he was in  
11 the building to come by the door and say, you  
12 know, I would like to run this past you, you  
13 know, I would like to give you a heads up. Can  
14 I specifically recollect any other discussions,  
15 I cannot.

16 Q. And that's why the next question for me is, all  
17 right, you've got a concern because you're  
18 suggesting, hey, maybe we can address this if we  
19 have a meeting with Mr. Bonsell. Do you  
20 recall-- And you think it was at your  
21 suggestion. Is that--

22 A. I think it was at either my suggestion or the  
23 suggestion of the department where they felt  
24 that they would be more expertly able to answer  
25 his questions and concerns.

00054

- 1 Q. In this intervening period between April and the  
2 fall, had you had any discussions with  
3 Mr. Bonsell personally?  
4 A. No, I did not.  
5 Q. So essentially any sense you have from  
6 Mr. Bonsell's concerns would be derived from  
7 conversations with Mr. Baksa?  
8 A. That's correct.  
9 Q. You've indicated that you think that the fall  
10 meeting with Mr. Bonsell occurred at your  
11 suggestion. What else can you recall about the  
12 meeting, Bert?  
13 A. Well, most of his questions were directed to the  
14 biology teachers. Jen Miller being the veteran  
15 teacher was the one who certainly had the most  
16 responses. I did not chime in that much because  
17 that's not my field. There were other biology  
18 teachers present who also contributed. And I  
19 think the reason for this was that his son was  
20 going to enter a biology classroom that  
21 particular year in the spring, spring semester.  
22 Q. Let's look at that. Who was at the meeting,  
23 Bert? There's Mr. Bonsell, there's you, there's  
24 Jen Miller. Mike Baksa?  
25 A. I believe Mr. Baksa was present.

00055

- 1 Q. How about any other science faculty?  
2 A. I think Bob Linker was there. Leslie Prall was  
3 there. And I believe then Bryan Rehm may even  
4 have been there. He at that point was the  
5 physics teacher. Do I remember any others, no,  
6 I do not.  
7 Q. How about Rob Eshbach?  
8 A. Yes, he was there.  
9 Q. Looking at Bryan Rehm, he's the physics teacher,  
10 is there any particular reason he would be  
11 there?  
12 A. Simply as a member of the science department. I  
13 am not certain that he was present.  
14 Q. How did it start? To the best of your  
15 recollection, I just want to get a sense for how  
16 the meeting unfolded. You're meeting as a  
17 science department with Mr. Bonsell. Did he  
18 present his concerns up front at the beginning?  
19 A. I believe Mr. Baksa basically, you know, might  
20 have indicated that we are all gathered together  
21 to basically answer the questions and concerns  
22 he had. I do not specifically remember the  
23 mechanics of that meeting, and I do not.  
24 Q. Do you recall any specific statements that  
25 Mr. Bonsell made?

00056

- 1 A. No, I do not or even questions.  
2 Q. How about any responses from Jen Miller, can you  
3 recall the-- Well, I'll tell you what, can you  
4 give me a sense for any of the concerns  
5 Mr. Bonsell expressed during the meeting?  
6 A. No, I cannot.  
7 Q. How about Jen, Jen Miller that is, can you tell  
8 me anything about the issues she was addressing?  
9 A. I don't know the specific questions. I know  
10 that she was very well prepared and she answered  
11 the questions adequately. And as we departed  
12 from the meeting, we all seemed to feel that he  
13 was satisfied with the presentation that we had  
14 given to him. That was our sense as we left.  
15 Q. If you had to characterize the tone of the  
16 meeting, was it collegial, cordial, civil?  
17 A. Yes, indeed, yes.  
18 Q. You said you departed thinking--  
19 A. We addressed his concerns and questions and--  
20 Q. Do you recall any specific scientific subject  
21 matter coming up like carbon dating, fossil  
22 record, stuff like that?  
23 A. No, I don't.  
24 Q. Any of the other science faculty speak?  
25 A. I think there were some others who answered that

00057

- 1 were biology teachers. I cannot tell you  
2 specifically which one.  
3 Q. How about the general thrust of Jen's comments,  
4 get any sense for that in your memory as you sit  
5 here today sort of what she made clear to him?  
6 A. Yes, specifically the differentiation between  
7 origin of species and origin of life and the  
8 emphasis being made that the biology teachers  
9 emphasize origin of species and change over  
10 time. That was the big thing.  
11 Q. This distinction you've just referenced, this  
12 has come up a couple times. As you sit here,  
13 Bert, I know you're not a biology teacher, nor  
14 am I. I discussed this in some measure  
15 yesterday with Jen, but can you recall what sort  
16 of distinction Jen Miller conveyed to  
17 Mr. Bonsell during this fall 2003 meeting?  
18 A. I think it had something to do with a bird,  
19 there was a bird in the tree, and how did the  
20 bird adapt himself to survive in the  
21 environment, did the beak get longer, did the  
22 claws get longer. No one cared where the bird  
23 came from. The bird was in the tree and changed  
24 over time. That was the point of the emphasis.  
25 Q. So change within species as opposed to change

00058

- 1 across species?
- 2 A. There certainly was main emphasis on change  
3 within the species. I do not know whether  
4 change between species was brought up.
- 5 Q. Anything else you recall about that meeting?
- 6 A. No.
- 7 Q. Do you recall anything Mike Baksa said?
- 8 A. No.
- 9 Q. Was Dr. Nilsen present?
- 10 A. I can't answer that.
- 11 Q. Do you think Trudy Peterman was present?
- 12 A. I can't answer that either.
- 13 Q. That's fine. This is a meeting in the fall of  
14 2003. About around what time, Bert? You said  
15 you thought it was early?
- 16 A. It was early September or October, I would  
17 assume.
- 18 Q. Between the meeting and the close of 2003, did  
19 anything happen that you saw as tied to that  
20 meeting or relating to the same subject matter,  
21 evolutionary theory, the curriculum, the biology  
22 text?
- 23 A. Well, we still had not gotten assurance that the  
24 biology book that they had hoped to get was  
25 going to be ordered. Again, in December or

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- 1 January of what would have been 2004 we  
2 submitted or resubmitted our order for those  
3 books, and we had not been guaranteed that we  
4 would-- Now, orders are not usually sent out  
5 before July 1 anyway. But we were trying to get  
6 some sense of are the teachers going to go home  
7 for the summer working on this new book to  
8 present their lessons and their activities and  
9 whatever or are we again not going to have that  
10 particular edition to deal with in the following  
11 year.
- 12 Q. That would be the summer of 2004?
- 13 A. That's correct.
- 14 Q. I'm trying to get a sense, was your concern,  
15 Bert, that if you didn't get them in 2003 you  
16 might lose your turn--
- 17 A. Yes.
- 18 Q. --altogether?
- 19 A. That was a concern because we are on -- or were  
20 on a seven-year cycle. And then not only was  
21 that a concern, then that throws the next  
22 subject back a year behind in terms of not  
23 getting their books.
- 24 Q. And that would be subject matter in the science  
25 department?

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- 1 A. No. That was subject matter I believe it may  
2 have been language arts. So it's an entirely  
3 different department. Everyone is on a  
4 seven-year cycle. So when ours were not  
5 ordered, then the next year somebody else's was  
6 delayed--
- 7 Q. Oh, I see, yes.
- 8 A. --a year because of the budget concerns.
- 9 Q. But apart from that -- I mean, I see you have  
10 that concern -- was there any further  
11 discussions with Mr. Baksa or anyone in the  
12 administration for that matter relating to the  
13 meeting, the issues that were addressed in that  
14 meeting as we reached the wrapping up of 2003,  
15 between this meeting in the fall and  
16 December 2003?
- 17 A. I'm sure we spoke on this issue, whether it be  
18 an in-service day or some other time, but I  
19 can't recall specific dates.
- 20 Q. At any time in 2003 did you have any discussions  
21 with any member of the board curriculum  
22 committee apart from the discussion that you've  
23 just described?
- 24 A. Not to my knowledge.
- 25 Q. At any time in that 2003 year did anyone from

00061

- 1 the administration ever get back to you with any  
2 directions to change the biology curriculum or  
3 presentation of subject matter in biology?
- 4 A. On certain in-service days we were directed to  
5 basically revise curriculum as it needed to be  
6 revised based on the new state standards. Were  
7 we directed to change the curriculum as far as  
8 evolution was concerned, not to my knowledge.
- 9 Q. Am I right, Bert, that the revision of  
10 curriculum you've just referenced is an effort  
11 to bring Dover's curriculum into, what shall I  
12 say, to dovetail it with the state standards  
13 we've been talking about?
- 14 A. That's correct.
- 15 Q. Well, that brings us to 2004 which by all  
16 accounts was an eventful year. Let's look at  
17 the period between January and March of 2004.  
18 It's just the beginning of the school year.  
19 We're going to focus on the biology text and the  
20 curriculum issue. In that three-month period,  
21 Bert, were there developments that touched on  
22 those issues?
- 23 A. We did resubmit the budget with the Miller and  
24 Levine book as indicated that that was our  
25 choice for our biology text. Now, that is done

00062

- 1 by the biology teachers together. They review  
2 various books, and there were many different  
3 books that they looked at. And this was their  
4 selection. And so we resubmitted it again so  
5 that we would have it for basically the  
6 2004-2005 school year.
- 7 Q. Did you participate in the text review in  
8 biology--
- 9 A. No, I did not.
- 10 Q. --or do you defer to your professionals?
- 11 A. I--
- 12 Q. Looking at that period, as you say, in the  
13 ordinary course the text request would go in.  
14 Any communications with the administration  
15 relating to the department selection of a text?
- 16 A. They usually relied on our professional  
17 judgment. And if we felt that this was an  
18 acceptable biology book, it usually has never  
19 been questioned.
- 20 Q. Looking at the period January through March  
21 2004, was there any conversations with any  
22 members of the board curriculum committee during  
23 that period relating to the biology text?
- 24 A. We had several meetings with the curriculum  
25 committee of the board. The one that I remember

00063

- 1 was in June, though, of 2004. But there was one  
2 that preceded that in this room -- I cannot tell  
3 you the exact date of that -- where we were  
4 present, and it had to do with the accepting of  
5 books for the family and consumer science  
6 department. It was that. But I cannot tell you  
7 exactly when that meeting was. It was in this  
8 room, and it was prior to this June meeting.
- 9 Q. Just tell me generally, there was discussion  
10 about that family and consumer sciences text  
11 here?
- 12 A. Oh, my, yes. Oh, my, yes, that poor woman who  
13 is a very gentle soul and certainly was not  
14 prepared for what was coming. It was pretty  
15 upsetting, where the comparison was made between  
16 the edition that she had and the new edition  
17 that they had recommended. And it was pointed  
18 out to her that there were only five words'  
19 difference in the entire text. I do remember  
20 that quite well.
- 21 Q. Who pointed that out to her?
- 22 A. Well, members of the curriculum committee were  
23 Mrs. Harkins, Mr. Buckingham, and Miss Casey  
24 Brown. One of the meetings Casey Brown did not  
25 attend. It was actually Mrs. Harkins who

00064

- 1 pointed that out. And we had also brought the  
2 other textbooks, those of the chemistry and  
3 those of the biology, at the same time. But  
4 that was the time, the only time, when the other  
5 department was present as well at that  
6 curriculum meeting.
- 7 Q. Did you leave this meeting you've just  
8 referenced prior to June 2004 with the sense for  
9 whether the family and consumer sciences text  
10 would be purchased?
- 11 A. We had doubt. We did not know.
- 12 Q. You've referenced a meeting in June. Can you--  
13 Towards the end of the month or the beginning,  
14 do you know when it occurred? I see your time  
15 line gives the month.
- 16 A. It had to be before we left school, and the  
17 reason that I know that is I specifically asked  
18 Mr. Buckingham if he would assure us that my  
19 biology teachers would have this new text to  
20 start the beginning of the school year because  
21 they had planned to do work using the new  
22 textbook obviously during the summer months.  
23 And it certainly would be a tremendous waste of  
24 time if, in fact, they knew full well that the  
25 textbook was not going to be chosen.

00065

- 1 Q. Am I right, Bert, at this time they're looking  
2 at the 2002 edition?
- 3 A. That's correct.
- 4 Q. So the meeting was had before the close of the  
5 school year?
- 6 A. That's correct.
- 7 Q. Is the school year's close before or after  
8 June 7, 2004, do you recall?
- 9 A. No, I don't. I know we had snow days then, so  
10 my guess it would be after June 7th would be my  
11 guess, though I don't have a calendar.
- 12 Q. Well, with that in mind, Bert, if you would,  
13 please look at Miller Number 3. And you will  
14 see there a packet of board minutes, board  
15 meeting minutes and agendas, the first one of  
16 which is for Monday, June 7, 2004. There's some  
17 handwriting on that, Bert. Is that your  
18 handwriting?
- 19 A. No, it is not.
- 20 Q. There's a notation SB in the upper right hand  
21 corner. Do you have an idea who that might  
22 refer to?
- 23 A. Yes, probably Sandy Bowser.
- 24 Q. Did Sandy Bowser provide copies of board agendas  
25 and minutes to the teachers when you were

00066

- 1 compiling materials?
- 2 A. Some board meetings that you attended there were  
3 not sufficient numbers of agendas; and,  
4 therefore, we sometimes asked the president of  
5 the association who was always in attendance if  
6 we could have a copy of hers. And that's where  
7 they came from.
- 8 Q. If you'll page through the ones relating to the  
9 June 7th meeting, Bert, and just let me know if  
10 you have any-- Oh, there's only one set, and  
11 that's SB. Do you have any notes that relate to  
12 the June 7th board meeting?
- 13 A. Not to my knowledge. If there were notes, they  
14 would be attached to this.
- 15 Q. Because of the way you guys put the materials  
16 together?
- 17 A. Yes, and because I can recognize the  
18 handwriting.
- 19 Q. Thanks.
- 20 A. Like this is Rob Eshbach's I mean.
- 21 Q. There's a notation on the first page of this  
22 June 7th agenda here that says, Bert, so--
- 23 A. That's me.
- 24 Q. That's you. I thought. Did you attend the  
25 June 7th, 2004 meeting?

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- 1 A. I can't remember that. I know I was at the  
2 June 14th meeting.
- 3 Q. Well, look at that notation, and that's what I  
4 wanted to ask you about. Do you think that  
5 Sandy Bowser might have scribbled that notation  
6 on the front page as a note to you to let you  
7 know what she heard at the June 7th--
- 8 A. That's a possibility. I don't know where this  
9 may have come up that it's on this front page,  
10 but Sheila obviously is referring to Sheila  
11 Harkins says they were never used and they're  
12 six years old. And the comment was bio never  
13 used the books.
- 14 Well, this had to be in relationship, okay,  
15 to this one year where not-- It's not that the  
16 students didn't use the books. It was the  
17 students didn't get a book to carry home with  
18 them. They were used within the classroom. And  
19 I do believe that it was probably taken out of  
20 context. And I think this was to basically  
21 alert me that this may be one of the reasons why  
22 you're not getting new ones, you didn't use the  
23 old ones anyway.
- 24 Q. That's what I was going to ask you about, Bert.  
25 When you look back at it, it seems like Barrie

00068

- 1 Callahan, maybe Sheila Harkins, and others had  
2 what was a mis-perception about use of that  
3 text. Is that accurate?
- 4 A. I think so. There were some other issues with  
5 the text. The text was not certainly as usable  
6 when we changed the curriculum because the  
7 emphasis of that book was in the area of  
8 classification, and we no longer did that. So  
9 it certainly was not as useful as some of the  
10 other reference books that we had available for  
11 student use.
- 12 Q. I think I know the answer, but let me just ask  
13 you, do you have any recollection of attending  
14 the June 7th meeting?
- 15 A. No, I do not.
- 16 Q. Let's look at the next set of minutes. I'm  
17 calling them minutes. Actually it's the agenda  
18 for the June 14th, 2004 meeting. You said you  
19 attended that, Bert?
- 20 A. Yes, I did.
- 21 Q. Was there a specific reason?
- 22 A. Well, if you go under to curriculum, we thought  
23 the books for the science department, okay, were  
24 going to be approved. And, therefore, I was in  
25 attendance for that reason to know whether they

00069

- 1 had been approved or whether they had not before  
2 we all left for the summer. But I was in  
3 attendance at that meeting.
- 4 Q. If you look at the first page here, you'll see a  
5 note, Bonsell intelligent design, C. Brown which  
6 I think is Casey Brown, uphold the law. Do you  
7 have a recollection of an exchange relating to  
8 the biology textbook at this June 14th meeting?
- 9 A. I know there was an exchange. I do not remember  
10 specifics of that.
- 11 Q. How about specific comments, does anything stick  
12 out in your memory as you sit here today from  
13 this June 14th meeting?
- 14 A. No.
- 15 Q. Do you recall any of the board members  
16 addressing the text?
- 17 A. Well, I know that the chemistry books and the  
18 family and consumer science books were approved.
- 19 Q. Did you stay for the whole meeting?
- 20 A. Yes.
- 21 Q. Well, I mean, this is one of the meetings where,  
22 you know, you can see there's some exchanges  
23 here relating to the books. Can you recall any  
24 specifics as you sit here today?
- 25 A. Not specifics. I do remember that that was a

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- 1 rather contentious meeting. I mean, there were  
2 some exchanges that actually occurred between  
3 board members that-- Now, specifics of that--  
4 Q. Well, let's just run through the board members.  
5 Well, let me ask you this, let's start with  
6 people in the public, do you remember any public  
7 comment by Barrie Callahan?  
8 A. I don't know whether it was that specific  
9 meeting, but Barrie Callahan often spoke at  
10 board meetings. And she always addressed her  
11 concern that students get the newest science  
12 books so that they be most updated. And she  
13 always wanted to know why the books had not been  
14 ordered and why they had been delayed.  
15 Q. Do you recall her making statements to that  
16 effect at this meeting or can you--  
17 A. Well, somewhere in those meetings she always  
18 questioned why the board had not approved the  
19 new books when the money for it had been in the  
20 budget.  
21 Q. Was she referring-- She's referring to what  
22 we've already talked about?  
23 A. All the science-- See, the whole science  
24 department ordered new books. Now, some were  
25 automatically ordered without question, the

00071

- 1 physics, the physical science, I think even the  
2 anatomy and physiology, although they may have  
3 been on that second one. And the chem of course  
4 then went. They approved those. But there  
5 were-- The entire science department is on that  
6 seven-year cycle, and every seven years we get  
7 the opportunity to order new texts.  
8 Q. You've mentioned some that were automatically  
9 purchased. Were they of the same age as the  
10 other books in chemistry and biology?  
11 A. Yes. And one set of books for the -- well, it  
12 was called STS at that time which is science,  
13 technology, and society. Today it's really  
14 environment and ecology. When we implemented  
15 that new course after that one year where all  
16 ninth and tenth graders took the biology course,  
17 those books were ordered out of our cycle and  
18 sequence because we had adopted the new course  
19 and we needed them for the following year, and  
20 without discussion, that was--  
21 Q. So did your department put in the request for  
22 new books in that subject area?  
23 A. Actually the year before we were to be cycled,  
24 yes. And that--  
25 Q. And, therefore, you didn't request them again?

00072

- 1 A. That's correct.
- 2 Q. Do you recall any exchanges between
- 3 Mrs. Callahan and Mr. Buckingham at this
- 4 June 14th meeting?
- 5 A. There were some words exchanged. Lonny Langione
- 6 also spoke, and there were some exchanges.
- 7 Larry Snook -- now, these are all former board
- 8 members -- basically spoke under public comment,
- 9 and it got somewhat heated.
- 10 Q. Were the heated exchanges both between board
- 11 members and the public?
- 12 A. Both.
- 13 Q. And between board members and board members?
- 14 A. That's correct.
- 15 Q. Let's look at the exchanges between board
- 16 members and the public. Do you remember any
- 17 specific statements that Mr. Buckingham made in
- 18 response to public comment?
- 19 A. I believe this was the board meeting in which
- 20 the statement by him was someone died on the
- 21 cross so many thousand years ago.
- 22 Q. Do you recall how he came to make that
- 23 statement?
- 24 A. Not exactly.
- 25 Q. Do you recall him saying anything else about the

00073

- 1 biology text?
- 2 A. Not at that point. I know there was also some
- 3 public comment in which a woman stood up and
- 4 read at length many verses from Genesis. I
- 5 think this was the same board meeting. And that
- 6 again I believe was under public comment.
- 7 Q. Anything else memorable from Bill Buckingham's
- 8 statements?
- 9 A. No.
- 10 Q. How about Alan Bonsell, do you recall him
- 11 responding to public comment?
- 12 A. Not specifically.
- 13 Q. How about Heather Geesey, do you recall anything
- 14 she said at the meeting?
- 15 A. I do not know whether it was this meeting-- We
- 16 ended up attending a lot of board meetings. I
- 17 do not know whether it was this one. There was
- 18 a statement made by Mrs. Geesey, and I'm not
- 19 exactly sure in reference to what. And Rob,
- 20 Jen, and I stood up simultaneously and went to
- 21 the podium. And it had to do with something
- 22 about attorneys and the teachers.
- 23 Q. We'll get to that in due time.
- 24 A. I'm not sure what board meeting that was, but it
- 25 was a board meeting.

00074

- 1 Q. Apart from that statement by Heather Geesey, do  
2 you recall anything she said relating to the  
3 biology text?  
4 A. No.  
5 Q. How about Jane Cleaver?  
6 A. No.  
7 Q. How about Angie Yingling?  
8 A. No.  
9 Q. How about Sheila Harkins?  
10 A. Not specifically.  
11 Q. You said not specifically. In general do you--  
12 A. She was not president of the board then, so I  
13 don't specifically remember her being singled  
14 out.  
15 Q. I understand. If you look at the agenda here  
16 we're talking about, there's a statement there  
17 that says, Bonsell intelligent design. Does  
18 that trigger any--  
19 A. No, it does not.  
20 Q. Bert, if you would, I'd ask you to look through  
21 Miller 2. If you look about halfway through  
22 that pack of documents, there's a document there  
23 that's headed at the top -- it's directed to  
24 Mr. Baksa -- and it begins, the new biology text  
25 we would like to order is Prentice Hall Biology

00075

- 1 by Miller and Levine copyright 2002. It  
2 concludes with, thank you, biology department.  
3 Does that look familiar to you, Bert?  
4 A. Yes, it does.  
5 Q. Did you produce that document?  
6 A. I did not.  
7 Q. Who did?  
8 A. Members of the biology department.  
9 Q. And that's the process we've described?  
10 A. That's correct. I believe Jen Miller was the  
11 lead person in writing it.  
12 Q. If you flip two pages, you'll see a document  
13 headed Dover Area School District and beneath  
14 that, Survey of Biology Books Used in Area  
15 Schools. If you flip to the next page, Bert,  
16 you'll see product profile for a book that says  
17 -- it's a book by Bob Jones University Press.  
18 And then if you flip further, you'll see  
19 handwritten notes headed at the top, Curriculum  
20 Committee and dated June 4, 2004. Do you  
21 recognize those, Bert?  
22 A. I recognize the top two documents. I do not  
23 recognize this, and I do not know whose  
24 handwriting it is.  
25 Q. So let's look at the top two then. Tell me, if

00076

- 1 you would, when did you first see those  
2 documents?
- 3 A. We were in a curriculum meeting with the  
4 curriculum committee, and these two documents  
5 were handed to us while we were in attendance in  
6 the meeting. Somebody had contacted Christian  
7 School of York, Delone Catholic, and York  
8 Catholic to inquire what textbook they use. The  
9 other book was a suggestion that was given to us  
10 to look at in lieu of the biology book that we  
11 were suggesting.
- 12 Q. Let's take a look at that now. You indicated  
13 there was a meeting of the board curriculum  
14 committee?
- 15 A. I believe in this room.
- 16 Q. Can you date it?
- 17 A. If you look at the bottom of the e-mail or the  
18 book having to do with Bob Jones University, it  
19 says 6/8/2004. I'm assuming that's the date I  
20 received it. So I would think it would be  
21 sometime early in June. And the notes, if you  
22 also look, are dated that same day, 6/4, of the  
23 curriculum committee.
- 24 Q. But you don't recall seeing the notes?
- 25 A. I do not know whose notes they are, no, I do

00077

- 1 not.
- 2 Q. At this board curriculum committee you're  
3 recalling now, who was present?
- 4 A. Mr. Buckingham, Mrs. Harkins, Mr. Baksa, Jen  
5 Miller, I believe Rob Eshbach, and myself. I do  
6 not know if Bob Linker was in attendance. He's  
7 a coach, and sometimes if you have meetings  
8 after school, he has duties that are elsewhere,  
9 so.
- 10 Q. How about Casey Brown?
- 11 A. One of the meetings with the curriculum  
12 committee Casey Brown was not in attendance, and  
13 I'm not sure for what reason. But one she was  
14 not here.
- 15 Q. How about Alan Bonsell, do you recall him being  
16 there?
- 17 A. I do not recall whether he was present.
- 18 Q. How about Richard Nilsen, Dr. Nilsen?
- 19 A. I don't remember that either, and I'm not sure  
20 if Dr. Peterman was there.
- 21 Q. What was the subject of the meeting?
- 22 A. We were again since this obviously is the  
23 beginning of June of 2004 still trying to  
24 resolve are we going to get the Miller and  
25 Levine biology text before we left to go home

00078

1 from school because the purchase order would  
2 have gone out the 30th of June in preparation  
3 for the July 1 change. And so we were still  
4 discussing the book.

5 Q. Do you recall anything more specific about the  
6 discussion? Discussing the book in what way?  
7 Well, do you recall anything Mr. Buckingham  
8 said? Was he complaining about the book?

9 A. Well, he still had questions about the book. I  
10 don't know whether complaining about it, but he  
11 certainly still had questions. This was the  
12 reason that he had directed I believe Mr. Baksa  
13 to contact these other -- and obviously these  
14 are religious schools here -- only to find out  
15 Delone Catholic had the same book that we did  
16 which was the Miller and Levine book.

17 The suggestion was also would we -- because  
18 we had reviewed many different texts, not just  
19 the Miller and Levine book, Lenko, Prentice  
20 Hall, Holt, Rinehart and Winston. We had  
21 reviewed some and of course were handed this as  
22 a possible suggestion for review.

23 Q. Who handed it to you?

24 A. I believe this was given to us by Mr. Baksa at  
25 that meeting.

00079

1 Q. Did Mr. Baksa ever tell you to review any of  
2 those books?

3 A. No. He just handed it to us, and the book was  
4 not present.

5 Q. And the same thing with the book that's from Bob  
6 Jones University Press, did he--

7 A. That's the one I'm referring to, that one. We  
8 got both of these from him at that meeting,  
9 these documents.

10 Q. But he didn't tell you to review any of these it  
11 sounds like.

12 A. No.

13 Q. Is that right?

14 A. Not specifically, no.

15 Q. How about in terms of recalling the discussion  
16 had at the meeting, do you recall any specifics?

17 A. I think that may have been the meeting-- It  
18 certainly was one of those curriculum meetings  
19 in June where I believe I looked at  
20 Mr. Buckingham, and I said to him, if I hear you  
21 say man and monkey in the same sentence one more  
22 time, I am going to scream. That may have been  
23 the meeting.

24 Q. Tell me about that. Was Mr. Buckingham saying  
25 man and monkey during this meeting to the extent

00080

1 you can recall?

2 A. Yes.

3 Q. Well, tell me what he said in connection with  
4 that--

5 A. Well, man and monkey in the same sentence  
6 sometimes has to do with certain people's  
7 perception of evolution. We have to my  
8 knowledge never taught that man came from a  
9 monkey. But much of this man and monkey  
10 conversation had to do with a mural that was in  
11 the school district that was given to the, if  
12 you will, I guess science department by a  
13 student. It was his senior focal project in the  
14 late 1990 something, '98 I believe maybe, where  
15 he painted a very large mural, 16 feet by  
16 4 feet, of the traditional evolutionary ascent  
17 of man that you often see where on the one end  
18 you had the four, you know, whatever and the  
19 other end the upright man.

20 That mural sat in one of the science rooms,  
21 now, not the present ones because the whole  
22 building has been redesigned. And I think there  
23 were certain members of the board and certain  
24 community members that were offended by the fact  
25 that that was in the school system.

00081

1 Q. Let's stop right there. You say I think certain  
2 members of the board were offended. Do you have  
3 any specific members in mind?

4 A. Yes, Mr. Buckingham. And there were also other  
5 employees in the school district that found that  
6 mural to be offensive because of their religious  
7 convictions.

8 Q. I think I know the answer to this, but how do  
9 you know that, Bert?

10 A. Because over one weekend the mural was taken out  
11 of the biology room and burned is how I have  
12 that feeling.

13 Q. I thought I might have that sense, too. Bert,  
14 if you would, would you look at Miller 4, top  
15 page. Let me refresh your recollection for the  
16 purposes of this little section of the  
17 deposition here. That looks like-- That first  
18 page of Miller 4 is titled, history - mural  
19 evolution of man. Is that a document that you  
20 created?

21 A. Yes.

22 Q. Where did you get the information for that  
23 document, Bert?

24 A. I lived it.

25 Q. You did?

00082

- 1 A. Yes. I was next door to the room in which the  
2 mural was.
- 3 Q. So this document you've just referred to relates  
4 to the mural that you're discussing. Is that  
5 right?
- 6 A. That is correct.
- 7 Q. So tell me about the discussion-- Well, we're  
8 talking about this meeting in June, and you  
9 indicated that Mr. Buckingham is using the  
10 phrase monkey and a man, and you are obviously  
11 linking that usage to this mural. Tell me more.
- 12 A. I actually questioned him as to where this man  
13 and monkey idea came from, and I may even have  
14 asked him does this go back to the mural which  
15 basically sat in what then was Room 217. And  
16 the reason that I say that, okay, at a board  
17 meeting in the spring of the year 2004 -- now, I  
18 cannot tell you what meeting, okay -- a picture  
19 of that mural apparently was shown to board  
20 members by Mr. Buckingham. I knew about that.  
21 And it may have been in this June curriculum  
22 meeting I asked him point-blank where he had  
23 gotten the picture of that mural. He would not  
24 answer me.
- 25 Q. A couple things, let me ask you, how did you

00083

- 1 know about the picture? How did you come to  
2 know about the picture of the mural?
- 3 A. Somebody who was in attendance, and I cannot  
4 tell you specifically who, at the board  
5 meeting -- it could have been an association  
6 person -- was sitting in the audience when the  
7 picture was being passed around. I did not see  
8 it. I was not present at the time.
- 9 Q. But you have this discussion with  
10 Mr. Buckingham, and how did he respond to your  
11 inquiry?
- 12 A. He did not respond when I asked him questions as  
13 to how he came by that picture. He just didn't  
14 answer me.
- 15 Q. How about your statement, you know, if I hear  
16 man and monkey again I'm going to scream, did he  
17 respond to that?
- 18 A. Not really. But he didn't say man and monkey in  
19 a sentence again, so. I mean, it was the end of  
20 that discussion at that point.
- 21 Q. Well, Bert, tell me you seem to be remembering a  
22 meeting that has some details sticking out.  
23 What I want to get is what do you remember about  
24 this exchange? What are the concerns that are  
25 being expressed by Mr. Buckingham and the way in

00084

- 1           which you as the science faculty are responding  
2           to them?
- 3   A.    Other than that brief exchange, it's always been  
4           a relatively civilized meeting. That probably I  
5           pushed it on that one, but finally I had had it.  
6           His concern was he felt, did not know, but felt  
7           that we were teaching that man comes from a  
8           monkey.
- 9   Q.    Now, did he say that?
- 10  A.    Yes, in some discussions he actually said that.  
11           And I said to him, and the biology teachers  
12           obviously said it more emphatically than I did,  
13           that was not my perception. To my knowledge--  
14           Now, I have to say to my knowledge because I am  
15           as department chair a facilitator of doing  
16           things. I am not a first line supervisor. I do  
17           not have the opportunity to go into biology  
18           classrooms and see and hear what they are  
19           teaching. That's not part of my job  
20           description.
- 21           So I'm saying, okay, his perception was we  
22           teach man comes from a monkey. And I felt that  
23           that came about because of the relationship to  
24           this mural, if the mural is sitting in a  
25           classroom. And it was because the building and

00085

- 1           grounds people refused to hang it on the wall so  
2           it had a permanent hanging. So this is where I  
3           got some of the clue that something was amiss  
4           here.
- 5           The science department had requested that  
6           like all the other murals in the school it be  
7           permanently affixed to the wall so it was  
8           stationary. And for whatever reason, the  
9           building and grounds people would not do that.  
10           And so it was sitting on the chalkboard in the  
11           back of the room in the tray.
- 12  Q.    Let me ask you, Bert, the document you created  
13           which is the first document in the packet marked  
14           Miller 4 halfway down has a reference to a  
15           Mr. Reeser?
- 16  A.    That's correct.
- 17  Q.    Was Mr. Reeser building and grounds?
- 18  A.    He was the head of building and grounds for the  
19           district, not just the high school, for the  
20           district, yes.
- 21  Q.    Would Mr. Reeser be the person who would be  
22           charged with seeing to it that the mural was  
23           affixed as the department desired?
- 24  A.    We originally asked the janitorial staff that  
25           services our building which would have been the

00086

- 1 high school, and they in turn apparently before  
2 they could hang it up had to get permission from  
3 Mr. Reeser, and that permission was not granted.  
4 Q. Continue, Bert, with your story. You've got  
5 this sense that the mural is underlying  
6 Mr. Buckingham's concerns, and you bring that to  
7 his attention. What happens next? What's the  
8 nature of the exchange?  
9 A. I specifically asked him, does this go back to  
10 the time of the mural because man and monkey  
11 would certainly evolve from this picture. And  
12 he questioned as to whether that was what our  
13 biology department was teaching in these biology  
14 classes.  
15 And it was at that point that Jen Miller  
16 and the biology people responded to that because  
17 I could not answer that. I did not know that.  
18 That pretty much, you know, once we had gotten  
19 over that, that ended it, and we went on to  
20 something else.  
21 Q. Do you recall what Jen said?  
22 A. Not specifically. But to my knowledge, she  
23 indicated that none of the present biology  
24 teachers ever teach that man comes from a  
25 monkey.

00087

- 1 Q. You say to your knowledge, Bert. Are you saying  
2 based on what Jen had told you earlier about the  
3 way in which she presented evolutionary theory?  
4 A. Yes. I do not have that firsthand.  
5 Q. We've got some statements by Mr. Buckingham at  
6 this meeting. How about you say Sheila was  
7 there. Did Sheila Harkins say anything?  
8 A. Not that sticks out in my mind.  
9 Q. Did she react or how did she react to  
10 Mr. Buckingham's comments?  
11 A. I think she raised her eyes when I spoke to him,  
12 as I recall. But she did not make a comment,  
13 you know, in regard to what he had said to me.  
14 Q. You say you let Mr. Buckingham have it that  
15 time?  
16 A. I don't know whether I'd say have it. I just  
17 simply said to him, if I hear man and monkey in  
18 the same sentence one more time, I am going to  
19 scream indicating that I had heard enough of it.  
20 But, I mean, that was the only exchange. I may  
21 have raised my voice, but, I mean, I didn't--  
22 Q. How about any of the other biology teachers, do  
23 you recall them saying anything at this meeting?  
24 A. I'm sure they had input. I'm not sure  
25 specifically what. Our major concern at the

00088

1 June meeting, wherever this was, okay, was are  
2 we going to have this biology book for the start  
3 of school. It was the last day of school. We  
4 wanted to go home. And so we didn't want to  
5 delay this any longer than we needed to. Our  
6 purpose was to find out will we have a biology  
7 book. And that's primarily. And then the next  
8 monkey wrench.

9 Q. Miller 4 references the destruction of the  
10 mural. Do you recall any discussion with  
11 Mr. Buckingham relating to the destruction of  
12 the mural?

13 A. Not with Mr. Buckingham. I don't think  
14 Mr. Buckingham was in the school district at  
15 that time. So-- Now, he certainly-- I think  
16 somewhere in all of our meetings the destruction  
17 of the mural came up because a board policy was  
18 created on accepting contributions from students  
19 and outside sources as a result of that where  
20 the board I guess had not been asked for  
21 approving the fact that the student gave this  
22 mural to the school.

23 I'm not exactly sure what the mechanics  
24 were whereby the student gave it to the school  
25 because it was in a classroom of a teacher who

00089

1 is no longer here. But I know a board policy  
2 evolved, okay, where the board felt they had the  
3 right to either accept or reject a gift from  
4 outside.

5 Q. Well, let me ask you about that. Do you have  
6 any recollection of discussions concerning  
7 policy relating to donations to the district?

8 A. At one meeting it certainly did come up where  
9 they now-- And I remember we said it probably  
10 would not be a bad idea for a policy to be used  
11 that this would not happen again that, you know,  
12 a gift would be blatantly destroyed and the  
13 person that gave it not given the opportunity to  
14 take it back.

15 Q. Do you recall in that discussion who suggested  
16 the idea of the donations policy?

17 A. No, I do not. I know at the curriculum  
18 committee meeting, that may have been the one  
19 that Casey Brown was there, Sheila Harkins, and  
20 Mr. Buckingham, and I think it was simply an  
21 open discussion where we as a department agreed  
22 that maybe it would not be a bad idea so that,  
23 you know, this does not happen and we go through  
24 this one more time.

25 MR. GILLEN: Let's take a brief break.

00090

1 (Recess taken)

2 BY MR. GILLEN:

3 Q. Bert, we were speaking about a meeting with the  
4 board curriculum committee which you believe I  
5 think was sometime in June?

6 A. That's correct.

7 Q. We had some discussion about the exchanges that  
8 occurred in that meeting. I want to ask you, do  
9 you remember the book Of Pandas coming up at  
10 that time?

11 A. It did not come up at that meeting.

12 Q. You have a definite recollection that it did  
13 not?

14 A. I do.

15 Q. How about specific complaints that  
16 Mr. Buckingham had with the text?

17 A. One of Mr. Buckingham's complaints was that it  
18 was laced with Darwinism.

19 Q. Do you remember him saying that?

20 A. Yes.

21 Q. Do you remember--

22 A. I do not know if it was at that specific  
23 meeting, but that was one of his complaints  
24 about the textbook that we had selected.

25 Q. Did he tell you what he meant by that? Did he

00091

1 elaborate?

2 A. He indicated that references to Darwin's theory  
3 of evolution was in more than one place in the  
4 chapter in the biology text on evolution.

5 Q. Do you remember him going through the text in  
6 any way with page numbers or anything?

7 A. Yes. And that is on a document which I believe  
8 you have in your possession.

9 Q. Are you referencing to these handwritten notes?

10 A. No. It is a typed document.

11 Q. Why don't you take a look at Miller 2. Does  
12 that document look familiar to you?

13 A. Yes, it does.

14 Q. Do you think that you saw this document we're  
15 looking at now which is one of the documents in  
16 Miller 2 headed, Teachers Edition Prentice Hall  
17 Biology Miller/Levine with a handwritten  
18 notation, given to Jen Miller in the upper right  
19 hand corner, do you think you've seen that  
20 before?

21 A. Yes, I have.

22 Q. Do you think you saw it in connection with the  
23 meeting we're talking about now in June of 2004?

24 A. I do not know if we received it at that specific  
25 meeting, but we received a copy of this after

00092

1 Mr. Buckingham had reviewed what was the teacher  
2 edition of the 2002 Miller and Levine book. And  
3 that was the only one that we had for him to  
4 review. It was sent to us by the Prentice Hall  
5 rep.

6 And some of the objections that he cited  
7 here had to do with references that appeared in  
8 the teacher's edition that would never have been  
9 seen by a student.

10 Q. Do you recall any discussion at the meeting  
11 along the lines you just suggested?

12 A. I remember Jen Miller pointing out to him that  
13 this was not a student edition of the book but  
14 it was the only one that we had available for  
15 him to take with him to review.

16 Q. If I understand you correctly, Bert, you're  
17 saying Jen was pointing out to him that some of  
18 his marked pages were pages that students would  
19 never see?

20 A. That's correct, where they had suggested  
21 discussion questions. They had suggested  
22 activities to be used by the teacher, whether a  
23 teacher chose to do so. The student certainly,  
24 though, would never have seen those suggestions.

25 Q. Apart from that exchange between Mr. Buckingham

00093

1 and Miss Miller and what we've already talked  
2 about, do you recall anything else being said at  
3 the meeting by Mr. Buckingham about the text or  
4 his reservations with the--

5 A. Not at that particular meeting, no.

6 Q. You say not at that particular meeting. Did you  
7 have discussions with him later?

8 A. I did not have discussions with him later.  
9 Subsequently to this June meeting, right before  
10 we left to come home from school, this book rep  
11 sent us and Rob received the book the 2004  
12 edition of Miller and Levine.

13 I immediately because I am an honest person  
14 called Mr. Baksa and I said, you need to be  
15 prepared that there is now a 2004 edition of  
16 this textbook out there before the vote which we  
17 thought was going to occur in July goes down to  
18 purchase the 2002 edition.

19 Q. Stop right there. I see where you're going.  
20 Let me ask you, about when did you get the 2004  
21 edition?

22 A. It was sometime between this meeting and when we  
23 left to go home for the summer.

24 Q. Now, if you turn the page on Miller 2, there's  
25 an e-mail I don't want you to look at. Turn the

00094

- 1 page again if you would, Bert. We're looking at  
2 a page that has at its top the heading, Beyond  
3 the Evolution versus Creation Debate. It has a  
4 handwritten notation, given to me by Baksa  
5 spring 2004. Do you recall seeing this  
6 document?
- 7 A. I recall seeing it. I have a copy in my file.  
8 Q. When did you see this Bert?  
9 A. I cannot tell you what meeting this was given to  
10 us by Mr. Baksa, but it was sometime in the  
11 spring of 2004. It was before that summer  
12 curriculum meeting.
- 13 Q. Before the June meeting we've been discussing?  
14 A. I believe.  
15 Q. Do you recall a discussion of this chart?  
16 A. No, I do not.  
17 Q. If you flip the page again, Bert, to a document  
18 that is headed Dover Area School District  
19 Changes in the 2002 and 2004 Copyright Biology  
20 Books from Prentice Hall, do you recognize that  
21 document?  
22 A. Yes, I do.  
23 Q. Does that document relate to the process you've  
24 just described of receiving an updated edition  
25 before the close of the school year in the

00095

- 1 spring of 2004?
- 2 A. The book that we received was very close to when  
3 we left at the end of school which would have  
4 been in June. That was when we got the 2004  
5 edition. But, yes, I recognize this document.
- 6 Q. Now, if I look at Miller 4, I see an entry for  
7 July 2004, and it references that J. Miller,  
8 Spahr, Baksa, Nilsen reviewed the chapter on  
9 evolution. Now, let me ask you, did that review  
10 take place at the beginning, the middle, or in  
11 the end of July?  
12 A. I have no idea. I know we were all home for the  
13 summer vacation, and all of us came to  
14 Dr. Nilsen's office to review the two editions  
15 of the book side by side.
- 16 Q. Do you know if the meeting you've just  
17 referenced occurred before or after whatever  
18 board meetings were had by the school board in  
19 July of 2004?  
20 A. My recollection is that it was probably before  
21 because the ordering of the book was tabled  
22 until the August meeting in terms of having  
23 people review the comparison.
- 24 Q. So you think the review took place prior to the  
25 July board meeting?

00096

- 1 A. I believe so.
- 2 Q. Then let's look at that document headed Changes  
3 in the 2002-2004 Copyright Biology Books. Tell  
4 me what sort of reviews you conducted.
- 5 A. We opened both books to the chapter on evolution  
6 because the other chapters were not in question,  
7 and we read paragraph by paragraph, picture,  
8 diagram by diagram to see where the changes were  
9 between the two editions.
- 10 Our conclusion when we got to the end was  
11 that we felt that the 2004 edition would  
12 probably be less offensive to most people than  
13 the 2002 edition. And, therefore, our  
14 recommendation was that we actually purchase one  
15 that was not already two, three years old but  
16 the 2004 edition.
- 17 Q. Did you look through the book yourself, Bert?
- 18 A. I was, yes, sitting at the table.
- 19 Q. As you went through it, did you compare the  
20 presentation of evolutionary theory in the 2002  
21 edition and in the 2004?
- 22 A. Yes.
- 23 Q. Did you have an impression as to the thrust of  
24 the changes made in the presentation of the 2004  
25 text?

00097

- 1 A. The verbiage in the 2004 edition removed words  
2 like primate from the discussion. In Number 1  
3 you will see deleted the word primates from  
4 ancestors shared with felines. Some of the  
5 diagrams and pictures removed again things that  
6 were certainly considered controversial so that  
7 we felt that the presentation of 2004 would be  
8 more acceptable we even thought to the board.
- 9 Q. Did you when you conducted your review look at  
10 the changes from the standpoint of assertions  
11 made on behalf of evolutionary theory, to be  
12 more specific, you know, claims made for what  
13 evolutionary theory could demonstrate?
- 14 A. That was not our intent. Our intent was to see  
15 how the two editions differed on this subject in  
16 that chapter.
- 17 Q. That's what I'm getting at, Bert. When you  
18 looked at it, how they differed, were you  
19 looking at how they differed from the standpoint  
20 of assertions that were made in the 2002 text  
21 with respect to what evolutionary theory showed  
22 or could show and then looking at the 2004  
23 edition with respect to the same concern what  
24 claims could be made for evolutionary theory?
- 25 A. I can't answer that. I am not the authority on

00098

1 what had previously been done in the textbooks  
2 in evolution. I think I was the one that  
3 basically wrote down words. I believe Jen had  
4 one book. I believe Mr. Baksa had the other  
5 book. And Dr. Nilsen would be floating in and  
6 out. So it was kind of a collaborative effort  
7 where we were literally comparing one chapter to  
8 the other.

9 Q. I don't want to belabor it. I just want to get  
10 a sense for the nature of that review. I know  
11 biology isn't your field. So when you're  
12 reviewing the text, I know you're comparing the  
13 presentation of evolutionary theory in the two  
14 versions, correct?

15 A. That's correct.

16 Q. What are you reviewing them in light of? I  
17 mean, what are you looking for?

18 A. Well, we certainly were looking to see if, in  
19 fact -- because certain chapters are never  
20 changed from one edition to another. We were  
21 looking to see whether the new chapter in the  
22 2004 book reflected any changes in light of the  
23 controversy that had been seen in print in the  
24 last several years because certainly this issue  
25 has been in print, e-mail, in documents,

00099

1 discussed all kinds of places. And we were  
2 there to see whether they had made changes that  
3 would make the book less controversial to  
4 people.

5 Q. You say seen in print. Are you referring to  
6 just media generally apart from Dover Area--

7 A. Yes, yes.

8 Q. When you are referencing that sort of  
9 controversy, Bert, what are you getting at  
10 exactly?

11 A. Well, there were court cases that were taking  
12 place in Georgia, there were some in Kansas,  
13 there were some in Michigan which involved this  
14 evolution and creationism discussion, and  
15 certain books certainly came up.

16 In Texas the discussion came up. And one  
17 of the big things is Texas purchases one book  
18 for the entire state. And, therefore, if you  
19 are going to have this purchased, then you  
20 certainly want to make the chapter that deals  
21 with evolution the least offensive to attract  
22 the greatest audience. And we felt it literally  
23 had been softened.

24 Q. You reference the evolution versus creationism  
25 debate, and we're talking about the period of

00100

- 1 July 2004. By that time, Bert, did you have an  
2 opinion concerning whether intelligent design  
3 was equivalent to creationism?  
4 A. I never heard the word intelligent design up  
5 until that time.  
6 Q. Up until what time?  
7 A. Actually August of 2004.  
8 Q. So are you just-- Well, let me ask you, you're  
9 saying in the June board meetings you didn't  
10 hear the term intelligent design?  
11 A. I did not because I-- I don't remember it,  
12 okay. I do not remember it. It certainly was  
13 not a discussion among the members of my  
14 department. Intelligent design never came to us  
15 until the book *Of Pandas and People* came to our  
16 attention.  
17 Q. So when you're reviewing the text here in  
18 July 2004, you're reviewing the text to see if  
19 it's less controversial from the standpoint of  
20 creationism?  
21 A. Well, certainly less controversial with the  
22 introduction of the words primates meaning  
23 monkeys or common descent. That was a big bone  
24 of contention, the stress being change over  
25 time. And those were the kind of things that we

00101

- 1 were basically looking at, at that particular  
2 point in time.  
3 Q. Let me see if I can go at this a different way  
4 here. When you came away from your review of  
5 the text, you say that you thought it would be  
6 more acceptable?  
7 A. We felt that.  
8 Q. Tell me why.  
9 A. Because some of the words that had been used,  
10 some of the diagrams and some of the pictures  
11 were removed from the 2004 edition. This whole  
12 idea of common descent was a big controversial  
13 issue, anything obviously having to do with  
14 primates.  
15 But when we reviewed it, and we basically  
16 did it from the beginning to the end of the  
17 chapter, and felt that Miller and Levine had  
18 done their best in doing the new edition to  
19 soften it and make it more appealing to a larger  
20 audience.  
21 Q. When you looked at those changes, did you have  
22 any sense for what was driving them? I mean--  
23 A. No.  
24 Q. No?  
25 A. I did not.

00102

- 1 Q. Well, did you see them as addressing specific  
2 claims advanced on behalf of evolutionary  
3 theory?
- 4 A. I was not aware of that, no. That was not what  
5 I was looking for. I was reading sentence by  
6 sentence and not necessarily comprehending  
7 anything that was being presented. We were just  
8 hunting differences to point out.
- 9 Q. And it seems like when you were hunting  
10 differences you were doing it in large in this  
11 sort of cultural controversy you've referenced.  
12 Is that right?
- 13 A. That's correct.
- 14 Q. You've referenced common descent several times.  
15 Numbered Item 11 on the page we're looking at  
16 now says, in same paragraph deletes common  
17 descent. Do you recall any discussion among the  
18 science faculty or the science faculty and the  
19 administration relating to that deletion, what  
20 significance it might have?
- 21 A. I don't recall any, no. That's not to say some  
22 discussion did not occur.
- 23 Q. Understood. You indicated that you-- Who was  
24 it, Jen Miller?
- 25 A. I think Jen Miller had the one book, and

00103

- 1 Mr. Baksa had the second book, and I was kind of  
2 there writing. We both kind of, you know-- We  
3 commonly, you know, shared because of course we  
4 knew that the board meeting was imminent and now  
5 here we were with a new edition, and we knew it  
6 was going to present a new problem.
- 7 Q. A new problem or a solution?
- 8 A. No, a new problem in that we had been assured in  
9 June that the 2002 edition of the Miller and  
10 Levine book was going to be approved by the  
11 board.
- 12 Q. Let's go back to that. Thanks, Bert. So when  
13 you came away from the June 2004 meeting with  
14 the board curriculum committee, it was your  
15 understanding that Miller and Levine 2002 would  
16 be approved by--
- 17 A. We were assured by that curriculum committee  
18 that the 2002 book would be ordered.
- 19 Q. Then the new book comes, and you see it's up in  
20 the air again. Is that correct?
- 21 A. We felt it probably would be because now there's  
22 a new edition. And they always pointed out, you  
23 know, why would you waste money buying a 2002  
24 edition when, in fact, it's always three years  
25 old even though the date says 2002 when now

00104

- 1 there is a new one which is now on the market.  
2 And that was the reason I called Mr. Baksa  
3 and said, you know, I hate to tell you this but  
4 the new one has now been received by us, what do  
5 we need to do. And that's when we sat down and  
6 we attempted to go through and see where they  
7 differed.  
8 Q. It seems you anticipated an objection to the  
9 2002 text based on it being old already?  
10 A. Yes.  
11 Q. Now, did you generate this document we're  
12 looking at, Bert, that's got the heading,  
13 Changes in the 2002 and 2004 Copyright Biology  
14 Books?  
15 A. I believe we had written it in pencil, and I  
16 think it was my understanding that Mr. Baksa's  
17 secretary actually typed the document as you see  
18 it here.  
19 Q. Did you have a meeting with the board curriculum  
20 committee as a result of the work that we need  
21 to preparing that document?  
22 A. Not to my knowledge. It was summer, and it  
23 would be hard to find with everybody's  
24 vacations, you know.  
25 Q. So you don't think there was any other meetings?

00105

- 1 A. I do not believe we ever had any meeting with  
2 the board subsequent to this.  
3 Q. The board curriculum committee?  
4 A. With the board curriculum committee, that's  
5 correct.  
6 Q. If you would, Bert, please look at Miller 3, the  
7 agenda for the July 2nd, 2004 board meeting.  
8 A. July 12th?  
9 Q. Yes. If you go to Item XIII curriculum, you'll  
10 see a notation on the right hand side, table to  
11 next meeting going into new edition at no  
12 additional cost. Does that reflect what we just  
13 talked about?  
14 A. Yes.  
15 Q. So it was tabled at the July 12th meeting. From  
16 your standpoint, Bert, you've got this meeting  
17 where you've reviewed the differences in the  
18 text, and was there anything, any communications  
19 that you had with either the administration,  
20 members of the school board, or your science  
21 faculty relating to the science biology textbook  
22 between that meeting you just discussed in July  
23 and the board meeting that was held on  
24 August 2nd, 2004?  
25 A. Not to my knowledge.

00106

- 1 Q. Did you attend the August 2nd board meeting?  
2 A. I don't think so because I think I was on  
3 vacation. I was not in attendance at the August  
4 board meeting.  
5 Q. But at some point in August it seems to me based  
6 on what you've said that the book Of Pandas came  
7 to your attention?  
8 A. My recollection is when we met in Mr. -- with  
9 Mr. Baksa in July in Dr. Nilsen's office I  
10 believe a copy of Of Pandas and People was given  
11 to Jen to look at. Nothing was said about it  
12 other than this is a book, would she please, you  
13 know, look at it or, you know, read through it.  
14 I did not have one. It was just given to her at  
15 that time.  
16 Q. Now, I just remembered something I wanted to ask  
17 you about. Going back to that June 2004  
18 meeting, do you recall there being any  
19 videotapes or DVDs given to the science faculty  
20 for review in that June meeting?  
21 A. I don't know when it was, the department was  
22 given a video which I believe was a set of  
23 three, or certainly there were three videos  
24 involved. And on the last in-service day the  
25 biology department viewed that video. And it

00107

- 1 had to do with discrepancies in the Darwin  
2 theory.  
3 And while we were viewing the video,  
4 Mr. Baksa came into the building, and I jokingly  
5 said, see, we're doing what you asked us to do,  
6 we're watching this video. And he asked us, you  
7 know, how we felt about it. And we said, there  
8 is some validity to it. Now, are we going to  
9 use it in our classroom, but, you know, we were  
10 willing to say, yes, there certainly is some  
11 validity to what we're looking at.  
12 And interestingly enough, one of the people  
13 on the video was one of the two authors of the  
14 bio book. But, yes, we did view one video, and  
15 it was basically on the last day of the school  
16 year as I recall.  
17 Q. And in that meeting in June do you recall there  
18 being some discussion of gaps in evolutionary  
19 theory and Jen Miller saying something like, you  
20 know, we can present the information on gaps?  
21 A. As a compromise to this curriculum committee,  
22 we -- when I say we, certainly the biology  
23 teachers because I don't teach it -- would be  
24 willing to point out that there are some gaps in  
25 this theory. And we were willing to do that

00108

- 1 thinking that we could maybe get this settled if  
2 this was going to be what would make him happy.
- 3 Q. Do you recall Jen saying something to the effect  
4 of I show the gaps to my students anyway?
- 5 A. Many of the biology teachers have already done  
6 that as past practice. But now what we would  
7 have been directed to do at that point is to see  
8 to it that every biology teacher would basically  
9 be teaching this as a consistency.
- 10 Q. Okay, I see. Back now to July and Of Pandas,  
11 you think it was then that Jen got a copy to  
12 review?
- 13 A. Yes.
- 14 Q. How about yourself, did you ever-- I know it's  
15 not your subject matter, but did you ever review  
16 the text?
- 17 A. Yes, I did. I read only the beginning which was  
18 the overview. There's a beginning which is the  
19 overview which covers all of the chapters, and  
20 then there's obviously what follows it which  
21 goes into greater depth. I read the overview.
- 22 Q. What was your take on it, Bert, after you  
23 reviewed the text?
- 24 A. I felt that the reading level of the text  
25 material would never have been suitable to a

00109

- 1 ninth grader. I have a master's degree, and I  
2 could barely get through it. Now, granted it is  
3 not my area of expertise, but it was very, very  
4 difficult to read. I felt that it was not good  
5 science, and I felt that there were some  
6 statements in there actually concerning  
7 chemicals that were not accurate.
- 8 I further went to the front of it. I  
9 looked who published it, tried to look up some  
10 information on the publisher. To my knowledge,  
11 this company that's out of Texas prior to the  
12 publishing of this book has only ever published  
13 labels in farming and manuals.
- 14 I furthermore then tried to research the  
15 authors to see what their background was. I  
16 looked at who had reviewed the book and found  
17 there was one high school teacher and everybody  
18 else was college professors. So I felt that the  
19 book was more suitable to freshmen or sophomore  
20 college students than it ever would have been to  
21 a ninth grade student body.
- 22 Q. You said you felt there was not good science.  
23 What did you mean by that, Bert?
- 24 A. Well, that it had some statements in it -- one  
25 had to do with the oxidation of carbon

00110

- 1 compounds -- which when you read it just was not  
2 accurate. It had things in it which were not  
3 going to be able to be proven, okay? In other  
4 words, if you-- I mean, I felt that what they  
5 were putting forth was a belief and not a  
6 theory.
- 7 Q. You've referenced some things that you think  
8 couldn't be proven and so on. I just want to  
9 make sure I understand what you're getting at  
10 there. Tell me more about that, Bert, when you  
11 say things that couldn't be proven.
- 12 A. Well, a belief is difficult to prove in a lab  
13 situation which is everything in science is  
14 pretty much lab based. For instance, I cannot  
15 prove what God is or is not. It is a belief.  
16 Where a theory has been time-tested explanations  
17 which basically cover observations and is our  
18 foundation in science. It is different from a  
19 law, and it is different from a hypothesis.
- 20 Q. I take it you understood the text to be  
21 advancing claims that were not -- did not  
22 satisfy your conception of what a theory was.  
23 Is that correct?
- 24 A. That's correct.
- 25 Q. And it seems, Bert, from what you've said that

00111

- 1 your overall criteria seems to be testable in a  
2 lab situation?
- 3 A. Yes.
- 4 Q. Apart from these reservations you've referenced,  
5 anything else? You said earlier that it was  
6 during this period of time that you first heard  
7 the term intelligent design. Did you first hear  
8 it through your review of this book--
- 9 A. Yes.
- 10 Q. --learned of the term intelligent design? How  
11 about did you ever speak with Jen Miller about  
12 the text Of Pandas?
- 13 A. Not until we returned to school that fall which  
14 was 2004.
- 15 Q. Just when does school start, September?
- 16 A. No. Usually it's the last week of August. I  
17 think because of the building project one year  
18 we went after Labor Day which I can't remember  
19 which year that is. But that was due to the  
20 building project. But normally we begin school  
21 the last week of August.
- 22 Q. Tell me what you recall about your discussions  
23 with Jen about the book.
- 24 A. We talked about the readability of the book --  
25 and everybody who looked at it maintained that

00112

1 the readability was too far above the level of  
2 the students it was supposed to serve -- some of  
3 the theories which were presented in the book.

4 And I think I have some notes somewhere  
5 having to do with notes that I had taken when we  
6 read the book because I remember asking I don't  
7 know whether it was Mr. Buckingham, but it was  
8 somebody on the curriculum committee, to explain  
9 what this meant that I read in the book because  
10 I as a scientist could not figure out what they  
11 were basically trying to say and did not get a  
12 response to that.

13 It was a pretty sophisticated vocabulary,  
14 and their explanations were well beyond the  
15 comprehension of ninth graders even if they were  
16 honor students. We did discuss that, though.

17 Q. You discussed that with Mr. Buckingham?

18 A. No, with Jen.

19 Q. Oh, with Jen?

20 A. And the department.

21 Q. Let's ask about that, how about Rob Eshbach, do  
22 you recall any discussions with him?

23 A. I do not know whether he had a copy of the book,  
24 but he certainly read excerpts from the book.

25 Q. You said you did some research on the book. Did

00113

1 you find criticisms of it online?

2 A. Yes.

3 Q. Did you collect those?

4 A. Yes.

5 Q. I know that you provided me with some documents.

6 A. Yes. And those are the ones that I had in my  
7 possession.

8 Q. Do you recall discussing the book with Bryan  
9 Rehm? Was he still at the district at that  
10 time?

11 A. No, he was not.

12 Q. Discussions with members of the board curriculum  
13 committee about the book?

14 A. I don't remember discussing Of Pandas and  
15 People. I never heard of the book other than  
16 when it was given by Mr. Baksa to Jen at that  
17 July meeting. I was not at the August board  
18 meeting when the vote to purchase the at that  
19 point 2004 edition of Miller and Levine came up  
20 for the vote. It went to a four/four tie. Then  
21 Mrs. Yingling switched to a five/three.

22 And of course I was away but was appalled  
23 when I got back because I had been assured by  
24 the curriculum committee that this book was  
25 going to go through and then come to find out

00114

1 that Mr. Buckingham had voted no on the book  
2 unless Of Pandas and People would serve as a  
3 companion book and be given to each student.  
4 Now, that was the first time I had ever heard  
5 anything about this book becoming a student  
6 text, so.

7 Q. When you returned, obviously somebody informed  
8 you as to what had transpired at the August 2nd  
9 board meeting. Who was that?

10 A. Well, I can't tell you exactly. I do know that  
11 before I left we had prepared all of the  
12 purchase orders so that if this were approved we  
13 had called the book companies, and the book  
14 companies had assured us that within receipt of  
15 the fax on the day after the board had approved  
16 it they would have those textbooks in our  
17 possession within two weeks. So we assumed that  
18 this was going to go ahead.

19 Now, the purchase orders were in the hands  
20 of Dawn Spahr, not a relative of mine who was  
21 the secretary to our principal, and they were  
22 automatically when the vote went down faxed to  
23 them.

24 Q. So the book was approved and purchased?

25 A. That's correct.

00115

1 Q. Now, if we look at your time line, Bert, there  
2 on the page which has the number two circled in  
3 the upper right hand corner there is a reference  
4 to a August 22nd, 2004 curriculum meeting. Did  
5 you attend that, do you know?

6 A. I don't know that. I would assume that I did.  
7 I can't imagine why I would not have. That was  
8 an in-service day.

9 Q. You have some recollection--

10 A. Yes.

11 Q. --of hearing that Of Pandas would be a  
12 supplementary text?

13 A. Well, that came out of the board meeting, not  
14 the curriculum meeting. That was the board  
15 meeting in August. I was not in attendance at  
16 that meeting, but it is my recollection that  
17 Casey Brown who then still served on the board  
18 asked Mr. Eshbach who was sitting in that board  
19 meeting whether he had any knowledge of Of  
20 Pandas and People, and he said he did not.

21 So that was our first inkling that Of  
22 Pandas and People was going to have any  
23 connection to our biology text that we thought  
24 we were going to get.

25 Q. Just to let me make sure I understand you, Bert,

00116

- 1 do you seem to recall that Casey Brown had not  
2 reviewed the Of Pandas text?
- 3 A. I have no knowledge of that. I don't know.
- 4 Q. I'm sorry, then I mistook what you just said.
- 5 A. I think she was asking of Mr. Eshbach who  
6 represented the science department if we had any  
7 knowledge of the Of Pandas and People book, and  
8 he said he did not because he was not at either  
9 of these other two.
- 10 Q. So, in other words, if Jen Miller had been there  
11 or you had been there, you would have known, but  
12 Rob Eshbach had not been at those meetings?
- 13 A. That's correct.
- 14 Q. Do you recall a meeting in August where this --  
15 the use of Of Pandas was discussed with the  
16 board curriculum committee?
- 17 A. Yes.
- 18 Q. Tell me what you recall about that meeting.
- 19 A. What I recall about the meeting is that, number  
20 one, the science department was certainly based  
21 on the fact of its readability or lack thereof  
22 happy to spend the kind of money that would be  
23 necessary to purchase those companion books for  
24 each student because we ordered 250 books, so  
25 that would mean 250 additional of these books.

00117

- 1 And budget constraints were pretty narrow.  
2 And of course one of our questions was  
3 where are the extra moneys for these books going  
4 to come from. Plus we thought they would not  
5 serve the students well because of their  
6 difficulty in vocabulary and readability.
- 7 So then it was suggested, and I cannot  
8 remember by whom, that the Panda book only be  
9 used as a reference text, that they be placed in  
10 the science classroom for use for students who  
11 chose to read them or whatever. And we're told  
12 that the goal of the administration was to place  
13 the books in the classrooms as reference as  
14 opposed to having each student have his own.
- 15 Q. Do you recall who specifically made that  
16 suggestion?
- 17 A. No. I believe Mr. Baksa and Dr. Nilsen were  
18 trying to appease both sides that, okay, if they  
19 say we must have Of Pandas and People and we say  
20 we do not want the students to carry two books,  
21 we have enough trouble truly trying to get them  
22 to carry one, that again we tried to compromise.  
23 You know, we thought that this would be an  
24 acceptable possible solution.
- 25 Q. You say you tried to compromise. Did the

00118

1 faculty indicate an openness to that use of Of  
2 Pandas?  
3 A. You mean the science faculty?  
4 Q. Yes.  
5 A. Biology teachers?  
6 Q. Yes.  
7 A. They agreed.  
8 Q. Let me ask you, we referenced that fall meeting  
9 in 2003 with Alan Bonsell. Had you done  
10 research on the legality of presenting  
11 creationism or intelligent design?  
12 A. I did not do the research. Somebody who was a  
13 member of the association, and it was actually  
14 the legislative committee, when this came to be  
15 actually did the research and handed me the  
16 packet of papers.  
17 Q. When this came to be, meaning this dispute or  
18 issue came up?  
19 A. The controversy.  
20 Q. Was that in 2003 that it first came up and you  
21 mentioned the issue to your association?  
22 A. Well, it was wherever that meeting was with  
23 Mr. Bonsell.  
24 Q. That was my question, Bert. So you had the  
25 materials we're talking about now prior to the

00119

1 meeting with Mr. Bonsell in the fall of 2003?  
2 A. Yes.  
3 Q. Do you recall giving those materials to  
4 Mr. Bonsell?  
5 A. I remember having those materials. I remember  
6 when the discussion arose I actually had read  
7 from those materials some things that were  
8 highlighted. I believe one member of the board  
9 asked if they could have copies of those things  
10 and was given to one of the secretaries to make  
11 copies of. I cannot tell you for certain  
12 whether it was Mr. Bonsell or whether it was  
13 Casey Brown, but it was somebody. Somebody did  
14 take those materials, copies of them.  
15 Q. So they got a copy of your materials?  
16 A. That's correct.  
17 Q. Bert, if you had to sum up what those  
18 materials-- Did you provide me those materials?  
19 A. I think so.  
20 MS. PENNY: Why don't we go off the record  
21 a moment and make sure.  
22 (Discussion held off the record)  
23 MR. GILLEN: We are back on the record and  
24 have confirmed that Bert in response to my  
25 subpoena provided me with a set of documents

00120

1 labeled research which I am going to mark as--  
2 I'm going to mark the whole packet as  
3 B. Spahr 1.  
4 (B. Spahr Deposition Exhibit #1 marked for  
5 identification)

6 BY MR. GILLEN:

7 Q. What we've marked now is B. Spahr 1, and, Bert,  
8 I'm going to ask you a few things. If we flip  
9 through this collection of documents, we come to  
10 a set that has a handwritten hash mark in the  
11 upper right hand corner, and about a third of  
12 the way down the document a bold heading that  
13 says, what does the Constitution say about  
14 teaching the religious theories of creation.  
15 And then beneath that there's another heading,  
16 what is creationism? What is creation science?  
17 What is intelligent design theory? And then  
18 there's some highlighting on that page. I'm  
19 going to ask you, Bert, do you believe that  
20 these are documents you brought to the meeting  
21 with Alan Bonsell in the fall of 2003?

22 A. I believe I brought them to some meeting. I  
23 cannot specifically say if it was that  
24 particular one.

25 Q. Do you recall a board member asking you for

00121

1 copies of these documents?

2 A. Yes, I do.

3 Q. Do you recall which one?

4 A. Not specifically.

5 Q. Do you have a sense for who -- which board  
6 members it might have been who asked for copies?

7 A. I believe it may have been Mr. Bonsell. It  
8 might also have been Casey Brown.

9 Q. In the meeting we're referencing, did you have  
10 discussion with the members of the board  
11 curriculum committee concerning the legality of  
12 presenting creationism in the classroom?

13 A. Yes. And we actually read from some of these  
14 documents.

15 Q. The document we've just discussed, is that the  
16 only document that you brought to the meeting  
17 you're recalling?

18 A. I cannot say that for sure. I don't know how  
19 many of these documents I would have had in my  
20 possession at that time.

21 Q. But the document we're talking about now is  
22 highlighted, and if I understand you correctly,  
23 it's that highlighting that makes you confident  
24 you brought it to the meeting?

25 A. I brought it to some meeting, yes, yes.

00122

- 1 Q. Do you recall discussing the legality of  
2 teaching creationism with Mr. Bonsell in the  
3 fall of 2003?  
4 A. I know we brought up in someone's presence this  
5 idea because we actually read may a teacher of  
6 science who teaches evolution also teach  
7 religious theories of creation and then said,  
8 you know, these are the responses which we have  
9 found and our concern is that we will go into  
10 the classroom and be asked to commit an illegal  
11 act.  
12 Q. Do you recall Mr. Bonsell responding to that--  
13 A. No, I do not.  
14 Q. --concern at that time?  
15 A. He was listening and was very open to what we  
16 had to say. I do not remember him giving us an  
17 answer.  
18 Q. How did you come by the documents that you  
19 brought to this meeting which we're discussing?  
20 A. A member of our professional organization who I  
21 believe is on the legislative committee when  
22 this topic came up researched religion in the  
23 science class, printed it off of the Internet,  
24 and presented it to me as department head.  
25 Q. Bert, if you would just page through the

00123

- 1 documents which follow the document that we've  
2 looked at, and you'll see one, Creationist  
3 Geologic Time Scale at the top it's headed that  
4 way.  
5 A. Yes.  
6 Q. As you look at that document, do you remember  
7 bringing that to the meeting we're discussing?  
8 A. No, I do not.  
9 Q. If you continue to the next stapled group of  
10 documents in this pack, you'll see it looks like  
11 some handwritten notes?  
12 A. Yes.  
13 Q. It says, a note from Priscilla J. Lauer?  
14 A. Lauer.  
15 Q. Who is that?  
16 A. Priscilla J. Lauer is one of the substitutes  
17 that substitutes in our district in the field of  
18 science.  
19 Q. If you flip the page over, you'll see a  
20 handwritten notation on the bottom of that page  
21 says, skeptical inquirer October 27th, 2003?  
22 A. That's correct.  
23 Q. Did you make that note?  
24 A. I wrote it down, and the reason I did is because  
25 Mrs. Lauer said that this was a scientific

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- 1 journal that contained articles having to do  
2 with intelligent design and creationism and  
3 evolution and then tried to find that magazine  
4 or that journal. We did not have it available  
5 in our high school.
- 6 Q. Do you know when you made that note, Bert?
- 7 A. No, I do not.
- 8 Q. Is the handwriting above the reference to  
9 skeptical inquirer Volume 27, is that your  
10 handwriting?
- 11 A. No. That is the handwriting of Priscilla Lauer  
12 who also gave us some reference material on this  
13 issue. She has written some letters to the  
14 editor. She is a biology teacher and was very  
15 concerned over this issue and, therefore, did  
16 some research on her own and presented us with  
17 this material.
- 18 Q. Is this material that you also brought to the  
19 meeting with Mr. Bonsell?
- 20 A. I do not know that. I did not carry all of the  
21 reference materials with me to that meeting. I  
22 believe that I carried only the ones that had to  
23 do with religion in the public school systems  
24 and some of the court cases.
- 25 Q. Bert, were you more focused on the legality as

00125

- 1 you saw it at that time?
- 2 A. Yes.
- 3 Q. Do you think you had looked at this material  
4 prior to the fall -- prior to the meeting we're  
5 discussing?
- 6 A. I don't think so.
- 7 Q. You don't?
- 8 A. No.
- 9 Q. Why is that?
- 10 A. I just didn't have time since my primary  
11 obligation is to teach students and I had labs  
12 to set up and tests to grade. So I did not read  
13 through all of these articles which are here in  
14 the research packet certainly prior to that  
15 meeting.
- 16 Q. Sure. How about do you think that you had  
17 received these documents from Ms. Lauer prior to  
18 the meeting we're discussing?
- 19 A. I can't answer that. My guess would be that  
20 that could not be possible because the reference  
21 to the skeptical inquirer is from a  
22 September/November 2003 journal. And I now  
23 have, and I think you do as well, that reprint  
24 of that article. We actually didn't have the  
25 magazine, but we basically, I believe, were able

00126

- 1 to acquire a reprint of it where it talks about  
2 science and religion.
- 3 Q. As we sit here today, is there any way for you  
4 to tell me any other documents that you may have  
5 brought to this meeting we're discussing?
- 6 A. Not to my knowledge.
- 7 Q. It's just the highlighting really that allowed  
8 you to distinguish these?
- 9 A. That's correct.
- 10 Q. Bert, we've been discussing a couple meetings of  
11 the board curriculum committee from the spring  
12 through August 30th, 2004. Do you recall  
13 discussing these issues of legality with the  
14 board curriculum committee at these board  
15 curriculum committee meetings we discussed?
- 16 A. No, I do not.
- 17 Q. Do you recall anything else about this  
18 August 30th meeting in which there was  
19 discussion of using Of Pandas as a reference  
20 text?
- 21 A. Nothing more than we felt that a compromise  
22 might possibly be reached in not having each  
23 student have Of Pandas and People but simply  
24 have available. And I think the suggestion was  
25 made that there were to be 20 copies of the book

00127

- 1 placed in each of the three biology classrooms.
- 2 Q. How about any curriculum change, did that come  
3 up during this August 30th meeting or around  
4 this time?
- 5 A. Not to my knowledge.
- 6 Q. In the meetings that we've discussed here from  
7 the spring through August 30, 2004, do you  
8 recall any discussion relating to curriculum  
9 change at that time?
- 10 A. No.
- 11 Q. So what happened next, Bert, from your  
12 perspective? I mean, there's this August 30th  
13 meeting with discussion of putting the Of Pandas  
14 in the classroom as a reference text. What's  
15 the next step in the story as you see it?
- 16 A. Well, the Miller and Levine book, the biology  
17 book, arrived prior to the beginning of school.  
18 They were appropriately stamped and numbered and  
19 distributed among the biology teachers that they  
20 would basically distribute them on the first day  
21 of school. Nothing else occurred until we got  
22 to the beginning of October.
- 23 Q. And that's what I wanted to ask you. In the  
24 period between August 30th and October 1, were  
25 you part of any discussions relating to the

00128

- 1 contemplated curriculum changes?
- 2 A. Not to my knowledge. I'm sure at that point  
3 they would have been cited on this time line.  
4 The first few weeks at the beginning of school  
5 are rather hectic to say the least, and I think  
6 we were all basically-- Now, remember, we were  
7 in new rooms having to move all of our supplies,  
8 and so we were pretty busy trying to get the  
9 start of school.
- 10 Q. How about do you know whether any of your  
11 science faculty, in particular your biology  
12 teachers, were having discussions with the  
13 administration with respect to potential  
14 curriculum change during this period from  
15 August 30th through October 1st?
- 16 A. Not to my knowledge, because usually if they  
17 would have been there, I would have been with  
18 them.
- 19 Q. And is that because in your capacity as science  
20 department head chair?
- 21 A. I'm the facilitator. If the administration  
22 would direct me to see to it that my biology  
23 teachers basically work on curriculum or work on  
24 assessments or standards, I need to know what  
25 the direction is so I can see to it that they

00129

- 1 would, in fact, get their job done, so.
- 2 Q. That brings us to October, and if you'd look at  
3 Miller 3, we'll flip to the board agenda for a  
4 board meeting that was held on October 4th,  
5 2004. If you look at the top right hand corner  
6 of the cover page, the first page of the agenda,  
7 there's the initials BS. Do you think that's--
- 8 A. Those are mine, and this is my handwriting.
- 9 Q. Did you attend that meeting?
- 10 A. If my notes are on here, I must have. I know  
11 for certain I was at the October 18th one, but  
12 obviously I was at this one as well.
- 13 Q. If you flip back to XIII, there's a notation  
14 there. And opposite the heading curriculum, can  
15 you tell me what that points to, Bert?
- 16 A. Yes. Under curriculum, the superintendent  
17 approved the donation of two classroom sets of  
18 25 each of the books Of Pandas and People. The  
19 classroom sets will be used as references and  
20 will be made available to all students.
- 21 Casey Brown who was at that point still a  
22 member of the board asked at that point whether  
23 the district would be accepting other books on  
24 the subject of basically evolution/creationism.
- 25 Q. Did she receive a response from the board at

00130

- 1 that time or any members of the board?
- 2 A. I believe the response was they would consider
- 3 each gift or presentation individually.
- 4 Q. Okay. And at the bottom of that Page 6 of the
- 5 agenda for the October 4th meeting there's a
- 6 circled heading, Policy?
- 7 A. I see that.
- 8 Q. Does that trigger any recollection on your part?
- 9 A. None whatsoever.
- 10 Q. Then if we look at Miller 4, your time line, the
- 11 page with the Number 2 circled in the upper
- 12 right hand corner, we see an entry for
- 13 October 8th, 2004. Take a look at that, Bert.
- 14 Have you?
- 15 A. Um-hum.
- 16 Q. Tell me, does this reference a meeting you had
- 17 with Mr. Baksa?
- 18 A. I don't know whether I would say meeting. It
- 19 was not uncommon for Mr. Baksa if he was in the
- 20 building to stop in to one of our rooms. I
- 21 don't know whether it would be called a formal
- 22 meeting. But certainly he came and presented us
- 23 -- now, when it says us, I am not exactly sure
- 24 what that means -- but the change in curriculum
- 25 including the mention of intelligent design.

00131

- 1 Now, this was given to us in written form
- 2 without any input from us. And the Panda book
- 3 was listed as a reference. That was the first
- 4 time we had seen this. We were not involved in
- 5 the curriculum meeting where this was done.
- 6 Q. Bert, do you recall being presented with a
- 7 document--
- 8 A. Yes, I do.
- 9 Q. --at this sort of drop-by meeting?
- 10 A. Yes, which is Miller 3.
- 11 Q. Does that look like it?
- 12 A. There were three different documents. I would
- 13 have to--
- 14 Q. I know what you're getting at, but--
- 15 A. I mean, I would have to see it somewhat closer
- 16 to know which one was first.
- 17 Q. Well, this one's marked draft.
- 18 A. Yes, this is the document.
- 19 Q. For the record, I'm showing you a page from the
- 20 exhibit that's been marked Miller 3. It is a
- 21 document that has draft stamped across the
- 22 middle of it and spray adhesive in the upper
- 23 right hand corner. It's a planned
- 24 instruction/curriculum guide that apparently has
- 25 been changed and is in draft form. Is that the

00132

- 1 document you believe that you saw on  
2 October 8th?
- 3 A. That is correct.
- 4 Q. Tell me, Bert, I know a little about your  
5 reaction to that document. Explain in detail,  
6 if you would, what you saw that was significant  
7 and what thoughts.
- 8 A. What was different is the end of the last-- In  
9 the second column the part that begins students  
10 will be made aware of the gaps and problems in  
11 Darwin's theory and of other theories of  
12 evolution including, but not limited to,  
13 intelligent design, we never agreed or were  
14 asked, I might add, to have that intelligent  
15 design placed there or the reference over in  
16 materials and resources which refer to Of Pandas  
17 and People placed there.
- 18 Q. Now, let me ask you a little about that. I  
19 mean, there had been some discussion of putting  
20 Of Pandas as a reference text in the classroom,  
21 right?
- 22 A. In the classroom.
- 23 Q. But you apparently were not thinking of putting  
24 it in the curriculum. Is that correct, Bert?
- 25 A. We were not-- We do not cite other reference

00133

- 1 books that are used in other classes. And,  
2 therefore, when we saw this, we were really  
3 quite surprised that that particular reference  
4 book was there.
- 5 Q. Surprised because other reference books are not  
6 listed?
- 7 A. Yes.
- 8 Q. Then there's some language which you've referred  
9 to under the -- at the foot of the column that's  
10 headed Unit Content/Concepts/Process. Now, it  
11 starts out, students will be made aware of  
12 gaps/problems in Darwin's theory and other  
13 theories of evolution. Was that consistent with  
14 matters you had discussed up until this point?
- 15 A. Yes, it was.
- 16 Q. So it was the addition of including, but not  
17 limited to, intelligent design that was what  
18 attracted your attention?
- 19 A. That was what the department, biology  
20 department, specifically objected to.
- 21 Q. Do you recall discussions between yourself and  
22 Mr. Baksa relating to that change?
- 23 A. I think we exchanged words on the idea.
- 24 Q. Exchanged words has a certain connotation.
- 25 A. No, I didn't mean it that way. I mean, but was

00134

- 1           it a formal meeting, I don't think so. I know  
2           that members of the department looked at this  
3           when we were handed the draft. And I'm sure we  
4           shared those concerns when we also sent an  
5           amended curriculum how the science department  
6           wanted this to appear.
- 7    Q.       Yes. We definitely will get to that. Let's  
8           see, who was present when Mr. Baksa stopped by  
9           with this draft document?
- 10   A.       I have no idea.
- 11   Q.       Do you have a sense that your biology--
- 12   A.       The biology department does not meet where the  
13           chemistry room is, so they're in the other end  
14           of the building. So, you know, if he came some  
15           evening after school-- Now, Rob Eshbach is  
16           right across the hall. He may have been in the  
17           room. But I have no idea or recollection who  
18           might have been in the room at the time.
- 19   Q.       And that's all I'm trying to get at. It sounds  
20           like it wasn't a meeting called for the  
21           purpose--
- 22   A.       It was not a formal meeting, no, it was not.
- 23   Q.       You were getting this as head of the science  
24           department?
- 25   A.       That's correct.

00135

- 1    Q.       Did you take it back to your biology teachers?
- 2    A.       Yes.
- 3    Q.       Did they express any thoughts in addition to  
4           those you've already told me about?
- 5    A.       Yes. They or we, meaning the biology  
6           department, sent an amended curriculum to this  
7           draft in which the reference to Of Pandas and  
8           People was removed, and the last part that had  
9           to do with including, but not limited to,  
10           intelligent design was removed. And I believe  
11           there was a period at the end of, of other  
12           theories of evolution, although I do not have  
13           that.
- 14   Q.       Bert, if you would, look at Miller 7.
- 15   A.       That's our amended version of the draft that the  
16           science department agreed to be presented.
- 17   Q.       Bert, we're looking at Miller 7. As you've  
18           said, there's three memos here which in turn  
19           reference three enclosures titled XI-A, XI-B,  
20           and XI-C. I would ask you to direct your  
21           attention to the curriculum chart following the  
22           cover memo which references enclosed in XI-B.
- 23           MS. PENNY: That's Bates Number 20.
- 24           MR. GILLEN: Right, with Bates Number 20 in  
25           the lower left hand corner.

00136

1 BY MR. GILLEN:

2 Q. Is that what you're referring to as the  
3 teachers' amended version?

4 A. Yes, it is.

5 Q. Comparing that document, Bert, with the draft  
6 that you received on October 8th, what did you  
7 see as the significant changes from the  
8 standpoint of the science faculty?

9 A. The reference to the reference material of Of  
10 Pandas and People was removed from the last  
11 column. And under the unit concept and content,  
12 the sentence ended with a period following and  
13 of other theories of evolution.

14 Q. Do you recall when you provided this to the  
15 administration, Bert? This plainly was prior to  
16 the October 18th board meeting.

17 A. Oh, my, yes. I would imagine that it was--  
18 Well, it was before October the 12th and the  
19 15th where Mr. Bonsell then amended it and added  
20 another thing which then became the third  
21 version. So I would say somewhere, I don't  
22 know, 10th, 11th because we had to meet  
23 together, and then we decided this would be our  
24 suggestion. And then it was presented back to  
25 Mr. Baksa.

00137

1 Q. Now, you've referenced some changes made between  
2 the 12th and the 15th. Were you a participant  
3 in any discussions which led to those changes,  
4 Bert?

5 A. No.

6 Q. What do you recall about those changes?

7 A. Somewhere between the 12th to the 15th  
8 Mr. Bonsell added a note to the bottom of the  
9 curriculum-- Let me go back a minute. The  
10 recommendation of the science department was  
11 rejected by the committee.

12 Q. And just for the record, Bert, that's the  
13 recommendation XI-B with the Bates stamp  
14 Number 20 at the bottom?

15 A. Yes. Yes, it is. And then after that,  
16 somewhere between the 12th and the 15th, we were  
17 told that Mr. Bonsell was going to add a note at  
18 the bottom of this section of the curriculum  
19 dealing with evolution that was going to read  
20 origins of life will not be taught.

21 Q. And you say, we were told. Who's the we?

22 A. Well, my guess would be Mr. Baksa. Since he was  
23 the head of curriculum and curriculum  
24 development, he was the one who usually carried  
25 the information between the science department

00138

- 1 and the curriculum committee.
- 2 Q. Well, you anticipated my question. Mike Baksa  
3 told you, but who's the we he told? Was it you  
4 and Jen Miller?
- 5 A. Well, it was probably biology teachers, but  
6 again I am not certain that was a formal  
7 meeting. We were all obviously getting prepared  
8 for the October 18th meeting which was the big  
9 board meeting. So who the we was I'm really not  
10 certain.
- 11 Q. In terms of getting prepared for that board  
12 meeting, Bert, did you have discussions with  
13 your science faculty?
- 14 A. We had some discussion in who would attend, you  
15 know, what was going to happen. I will say that  
16 my science staff was somewhat upset because the  
17 perception in the community and the perception  
18 in some of the newspapers was that the science  
19 department contributed to and were behind the  
20 change in this curriculum. And it was at that  
21 point that I decided that I was going to make a  
22 public statement the night of that board meeting  
23 prior to the vote under public comment.
- 24 Q. Before we go there, I apologize, I didn't ask  
25 you, did you go to board meetings in September

00139

- 1 of 2004?
- 2 A. I can't answer that. If we have the board  
3 minutes and I could look and my handwriting is  
4 there, my guess will be that I may have. But I  
5 don't specifically remember attending in  
6 September. August I did and October I did.
- 7 Q. I just want to be sure. I don't think there are  
8 any minutes. There are no agendas or minutes  
9 from September. It seems you don't have any  
10 independent recollection of attending.
- 11 A. No, I do not.
- 12 Q. Good enough. Well, I understand why you decided  
13 you were going to make a statement. Any other  
14 discussions with your science faculty about the  
15 competing versions of proposed curriculum  
16 changes between the period October 8th and  
17 October 18th?
- 18 A. Well, after we were told that our proposal was  
19 rejected, the biology department didn't feel  
20 real comfortable about what was going to happen.  
21 They had a pretty good inclination or at least  
22 thought so that the proposal by the curriculum  
23 committee without our input was probably going  
24 to pass.
- 25 Q. Did you have any discussions with either

00140

- 1 Dr. Nilsen or Mike Baksa about trying to find  
2 some sort of middle way here?
- 3 A. I don't recall that.
- 4 Q. How about you've referenced a note. Do you  
5 recall having any discussions with your science  
6 faculty relating to the purpose of the note  
7 which was added to XI-C document from Miller 7  
8 with Bates stamp Number 22 which says the  
9 origins of life is not taught? Do you recall  
10 discussions touching on that?
- 11 A. Yes, I do.
- 12 Q. Tell me what you remember.
- 13 A. If the note reads the origins of life will not  
14 be taught, then our question is why would the  
15 reference book Of Pandas and People be placed  
16 anywhere because if you look at the title of the  
17 textbook, it says the origins of life right  
18 under the thing Of Pandas and People. And there  
19 was obviously some question if, in fact, you  
20 know, the statement now reads the origins of  
21 life are not going to be taught, then why are we  
22 dealing with the intelligent design issue or of  
23 the book Of Pandas and People.
- 24 Q. Did you ask that question, Bert? Did you direct  
25 that question to any of the administration?

00141

- 1 A. In this interim there were so many meetings and  
2 so many people, I can't answer that. I don't  
3 know that. I'm certain it came up somewhere  
4 because, I mean, by that time, you know, we had  
5 all seen, many of us, copies of Of Pandas and  
6 People, and there in the title were these words.  
7 And if, in fact, we are not going to teach  
8 this, then the question would arise as to what  
9 would then be the purpose of that reference  
10 book. But, you know, in terms of having a  
11 formal, you know, meeting in which just that  
12 topic was discussed, the answer is no.
- 13 Q. How about at any time during this period did you  
14 have any conversations with members of the board  
15 curriculum committee about the note?
- 16 A. Not to my knowledge.
- 17 Q. How about with members of the school board  
18 generally, any discussion?
- 19 A. Not that I remember.
- 20 Q. Well, you go into the October 18th board  
21 meeting, Bert, and just tell me what you can  
22 recall. Well, let me ask you this, did you have  
23 any discussions with any board members leading  
24 up to the October 18th board meeting at all?
- 25 A. Could you repeat that, please.

00142

- 1 Q. From October 8th through October 18th, we have  
2 what we see as the curriculum change is sort of  
3 in process. And I just want to get a sense,  
4 before you go to the public meeting on  
5 October 18th, did you speak to any of the board  
6 members yourself?
- 7 A. About the change in the curriculum and the fact  
8 that the science department had no input into  
9 it?
- 10 Q. Yes.
- 11 A. Not to my knowledge. I believe Casey Brown as I  
12 was either coming into this meeting said  
13 something to me, but it certainly was not a  
14 discussion, how does the science department  
15 feel, but it was not a discussion.
- 16 Q. Going into that meeting, did you have any  
17 discussions with the administration?
- 18 A. Actually prior to the start of the board  
19 meeting, the science department, Jen, Rob, and I  
20 were sitting at a round table, and Mr. Baksa  
21 handed us the document. And it's very confusing  
22 because you have A, you have B, you have C. And  
23 even when the vote came down, even the people  
24 who were voting did not know what we were  
25 looking at, whether it was A, B, or C.

00143

- 1 And that was the final-- That was the  
2 first time we had seen what became I guess the  
3 final document that was approved. But that's as  
4 much as I remember. He walked over to the  
5 table. He handed us the piece of paper, and I  
6 can't tell you which it is. It's the one that  
7 was finally approved. I can't remember how it  
8 was labeled.
- 9 Q. Don't worry. Don't worry, Bert. Just let me  
10 look at it here. Look at this one with the  
11 blacked out. Take a look at that.
- 12 A. Well, I don't think it's this one because in the  
13 one that was approved, it had intelligent design  
14 at the bottom in addition to this note and this  
15 reference to Of Pandas and People. Now, where  
16 exactly that is, but that was the one.
- 17 Q. Let me ask you this, we're going into the  
18 October 18th board meeting, and you've  
19 referenced a document that Mr. Baksa gave you is  
20 Miller 7, this collection of pages. Is this the  
21 document you received from him?
- 22 A. No. We only got one page from him that one  
23 night at the board meeting. We had had others.  
24 I'm not certain--
- 25 Q. That's okay.

00144

- 1 A. Because the one that was finally approved has  
2 this on the bottom. It has this on the side,  
3 but it does not stop after evolution. I believe  
4 it has the original verbiage which is including,  
5 but not limited to, intelligent design on it  
6 under column two.
- 7 Q. Do I understand you correctly that the final  
8 version is a combination of the text from XI-A  
9 along with the addition of the note taken from  
10 XI-C?
- 11 A. That is my understanding.
- 12 Q. All I'm trying to do, Bert, is understand what  
13 you had going into the meeting and how you  
14 viewed that. If I'm correct, you're telling me  
15 that you had already seen the board curriculum  
16 committee's version which is XI-A?
- 17 A. That's correct.
- 18 Q. You had already given to the administration the  
19 teacher's version which is XI-B?
- 20 A. That's correct.
- 21 Q. And Mr. Baksa had just handed you for what you  
22 believe is the first time the page that is  
23 XI-C?
- 24 A. Now, it had been mentioned to us that  
25 Mr. Bonsell was going to add this last

00145

- 1 statement. I did not have it in print in my  
2 hand. That's what I got prior to the board  
3 meeting.
- 4 Q. Well, let me ask you about that, Bert. As  
5 you've already noted, XI-C does have the note  
6 which you say you were aware of and attributed  
7 to Alan Bonsell. But XI-C also admits the  
8 reference to intelligent design.
- 9 A. That one does appear to do so, yes.
- 10 Q. If you look at the cover memo for XI-C, you'll  
11 see that it states attached is a second draft of  
12 the recommended changes to the biology  
13 curriculum from the administration and staff.
- 14 Now, what I want to get your sense for is  
15 this, based on your discussion today, the note  
16 origins of life is not taught reflects the  
17 practice of the teachers which you've described  
18 already, is that correct, that they didn't teach  
19 origins of life?
- 20 A. The present teachers do not teach origins of  
21 life. That's not to say that there were not  
22 biology teachers before this who are no longer  
23 here.
- 24 Q. Oh, yeah, understood.
- 25 A. Yes, that is my understanding.

00146

- 1 Q. Okay, good enough. Then as you've noted,  
2 another difference from the version that the  
3 teachers have proposed was the reference to the  
4 book Of Pandas which is contained in the column  
5 headed materials and resources. Is that right?  
6 A. That's correct.  
7 Q. Do you recall having any discussions with  
8 Mr. Bonsell about the note? I think I asked you  
9 this but--  
10 A. No, I did not.  
11 Q. Do you recall having any discussions with your  
12 science faculty about the note, either Jen  
13 Miller or Rob Eshbach or one of the people  
14 teaching biology?  
15 A. I remember somewhere like over lunch or whatever  
16 the statement came up if we are not teaching  
17 origins of life, then what, in fact, is the  
18 purpose of having intelligent design listed as  
19 part of the curriculum or the book Of Pandas and  
20 People there because that seems to be what it is  
21 addressing.  
22 Q. You've referenced this situation where the board  
23 meeting is about to start and Mr. Baksa has  
24 provided you with XI-C. Did you have any  
25 discussion with him about XI-C?

00147

- 1 A. No. The board meeting was about to begin.  
2 Q. Did you have any discussions with Mr. Baksa  
3 about the desire of the biology -- or the  
4 science department and biology teachers for the  
5 administration to take a certain position?  
6 A. I don't know when that came to be. But, yes, I  
7 can say that the biology teachers and the  
8 science department were somewhat disappointed  
9 that it did not appear that we were going to  
10 have the support of the administrators on this  
11 issue, that the board was now going to literally  
12 be coming in and without our input since we  
13 happened to be the experts in science altering  
14 the curriculum and then we were going to be held  
15 accountable to teach what is written on the  
16 curriculum.  
17 And that's not standards driven.  
18 Intelligent design or whatever we wish to call  
19 it, creationism, is not part of the mandated  
20 state standards.  
21 Q. That's understood. I'm trying to get at your --  
22 just the exchanges with the administration and  
23 the science faculty about the upcoming meeting,  
24 the October 18th meeting and what you as the  
25 science faculty might have communicated to the

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- 1 administration about the upcoming deliberations  
2 on the competing versions of the curriculum.
- 3 A. We had no communication with the administration.  
4 The administration did not know that I was going  
5 to make a statement. I did not inform them I  
6 was going to do so. I am a property owner in  
7 the Dover Area School District, and I felt as a  
8 taxpayer as well as the department chair I had  
9 the right to make a statement.
- 10 Q. Certainly.
- 11 A. But we did not communicate with the  
12 administration who would attend, what we would  
13 say or do. It just was not something we did.
- 14 Q. So it seems like there wasn't a lot of  
15 discussion leading up to the meeting about these  
16 rival versions. Did you feel like everyone knew  
17 everyone had a different choice?
- 18 A. Yes. And we did have the feeling going into the  
19 meeting that the administration thought that a  
20 different document was going to be approved. I  
21 don't know why I feel that way. I can remember  
22 Dr. Nilsen walking over toward our table and  
23 saying when you hear, I don't know, the  
24 decision, don't clap. And to this day, we have  
25 no idea what that meant. So we don't know

00149

- 1 whether they thought something was going to  
2 occur that did not occur. We have no idea.
- 3 Q. Well, let me ask you about that, Bert, because  
4 if you look at both XI-B, the cover memo for  
5 that, and the cover memo for XI-C, if you look  
6 at that, read that if you would, Bert, read the  
7 description on that page. That's XI-B, right?
- 8 A. Yes.
- 9 Q. Now flip to XI-C, Bert.
- 10 A. Which is this one?
- 11 Q. Yes. You see that cover memo. Read that.  
12 You'll see both are recommended changes to the  
13 biology curriculum from the administration and  
14 staff. They're described as such. Do you  
15 recall, and again looking at XI-C at the note,  
16 the note origins of life is not taught that is a  
17 -- that reflects existing practice of the  
18 biology teachers as of the time that this is  
19 submitted to the board. Is that correct?
- 20 A. That is my understanding, yes.
- 21 Q. On the other hand, we understand that this  
22 reference Of Pandas and People in this column  
23 here, materials and resources, is something that  
24 the science teachers saw as unusual and not in  
25 keeping with the ordinary practice?

00150

- 1 A. Yes.
- 2 Q. So as you approached the board meeting, was  
3 there some exchange between either Dr. Nilsen or  
4 Mr. Baksa and the science faculty about the  
5 administration version being selected?
- 6 A. I can't answer that.
- 7 Q. Let me look at it this way, when Dr. Nilsen said  
8 when the curriculum is approved--
- 9 A. We have no idea whatever that comment meant.  
10 And to this day, we still don't know because we  
11 had the feeling that something was going to  
12 occur that we all would be happy or satisfied  
13 with. Well, it most definitely did not. But  
14 that was kind of our sense that even he may have  
15 thought that something different was going to go  
16 down, that there was going to be a compromise.  
17 And I am now looking at these three  
18 documents, and I can honestly say to you I do  
19 not know which, if any, of the three of these is  
20 the final document.
- 21 Q. Well, I agree with you, Bert, because the final  
22 document as reflected in the board minutes is a  
23 combination of these. So you would not have  
24 been able to see the final document prior to the  
25 meeting?

00151

- 1 A. Because I'm looking at this, and I am thinking  
2 this is not the document we think that was  
3 passed.
- 4 Q. No, you couldn't have seen it because these are  
5 documents generated coming up to the meeting.  
6 I'm sorry if I was unclear about that.
- 7 A. Because the final one that was passed is  
8 actually with this, with this, and then with the  
9 last part of that sentence. I'm beginning to  
10 think even I don't remember what it looked like,  
11 but, yes. Thank you.
- 12 Q. Now do you see?
- 13 A. Thank you for clarification, yeah.
- 14 Q. And that's why I asked you again, as you were  
15 going into the meeting and you say you had the  
16 sense that the administration thought something  
17 was going to happen that you as teachers were  
18 going to be comfortable with, looking at these  
19 three versions seeing that two of them are  
20 billed as administration and staff, does that  
21 trigger any recollection on your part as to what  
22 the administration went into the board meeting  
23 looking for?
- 24 A. Well, certainly B does because that was the one  
25 where the science -- or the biology department

00152

1 certainly amended it. We had given it to  
2 Mr. Baksa, and he certainly accepted our  
3 discussion. Then this one as it was written--  
4 MS. PENNY: Say which one for the record.  
5 A. Enclosure C.  
6 BY MR. GILLEN:  
7 Q. XI-C?  
8 A. XI-C. --would have been acceptable. The  
9 science department could have lived with this.  
10 Now, we weren't happy with Pandas and People  
11 over there. But the fact that the ID issue was  
12 removed from that section of the curriculum we  
13 would have been able to live with.  
14 Q. And the fact also was that there had been  
15 discussion of putting Of Pandas in the classroom  
16 as a reference text?  
17 A. That's correct.  
18 Q. And the teachers had said fine?  
19 A. Yes.  
20 Q. So you go into the meeting, and you've prepared  
21 a statement. Let me just, if you would, see the  
22 meeting through your eyes. Did it start with  
23 public comment?  
24 A. No. It started out with the traditional roll  
25 call, the pledge to the flag. There were a few

00153

1 other items that were done prior to the public  
2 comment.  
3 Q. Now, at this time was public comment allowed  
4 before each agenda item?  
5 A. Yes, it was. Well--  
6 Q. Or in connection with specific agenda items? In  
7 other words, we're rolling through the agenda  
8 here, and we know that we're coming up on--  
9 A. I believe at that point public comment was  
10 allowed simply as public comment. I do not  
11 think that policy changed because I know there  
12 were two-- Later the change occurred that there  
13 were two public comments, one at the beginning  
14 that had to do with I believe agenda items and  
15 then one at the end which could be of anything  
16 else.  
17 And usually-- Yes, there was a public  
18 comment listed here as 14 on that same day. But  
19 I believe the public comment at the beginning  
20 had to do with items referring to the agenda.  
21 And since the vote on the acceptance of the  
22 curriculum, I spoke at the earlier one.  
23 Q. You know what, Bert, in looking now at Miller 3,  
24 I note that there are apparently no minutes --  
25 or no agenda for the October 18th board meeting.

00154

- 1           Would you look through your stack?  
2 A.       Here it is. It's right here under Exhibit 3.  
3           It's right here with my initials at the top.  
4           It's following the October 4th one that have my  
5           initials at the top.  
6           MR. GILLEN: Can we go off the record.  
7           (Discussion held off the record)  
8 BY MR. GILLEN:  
9 Q.       I'd ask you to look at Miller 3, the agenda  
10          relating to the October 18th, 2004 meeting, and  
11          there are some handwritten notes after that. If  
12          you would look at those, Bert, and tell me--  
13          The agenda has BS in the upper right hand corner  
14          on the first page. Is that Bert Spahr?  
15 A.       Yes, it is.  
16 Q.       And then if we looked at the pages between the  
17          first page of the agenda for October 18th and  
18          the first page of the agenda for November 1st,  
19          2004, we'll see a couple of things here,  
20          handwritten notes. Are they your notes, Bert?  
21 A.       They are.  
22 Q.       And then behind the handwritten notes there's an  
23          Enclosure XI-C, right?  
24 A.       Yes.  
25 Q.       Now, let me ask you, Bert, it seems to me that

00155

- 1           the fact that these documents are grouped in  
2           this way reflects particularly that XI-C appears  
3           here to reflect what you've already told me  
4           which is that you received this document so far  
5           as you can make it out around the time you had  
6           the agenda. Is that correct?  
7 A.       That's correct. Now, I'm not exactly sure why  
8          there is the blacking out of what would have  
9          been that note down here.  
10 Q.       Would you take a minute to just look through  
11          those notes?  
12 A.       Through the minutes of the board meeting?  
13 Q.       No, your notes.  
14 A.       My notes.  
15 Q.       Yes.  
16 A.       I must say they're not the most legible I've  
17          ever done. Usually I carried with me a tablet  
18          that had lined paper and wrote rather than on  
19          the agenda which we often shared on there. I'll  
20          look at these notes.  
21 Q.       Let me ask you, had you spoken with your science  
22          faculty prior to the October 18th meeting for  
23          the purpose of generating attendance at the  
24          October 18th meeting?  
25 A.       We met over lunch and asked who would be

00156

- 1 attending that meeting. We felt that since the  
2 curriculum was going to be approved at that time  
3 it was important for the science as many of us  
4 to be present as possible.
- 5 Q. Apart from discussions with your science  
6 faculty, did you speak with anyone else?
- 7 A. There were other members of the faculty who also  
8 came in support of the science department to  
9 that meeting. So the English department, the  
10 math department, yes. At length did we discuss  
11 it, no. They simply indicated that in support  
12 of us they were going to attend.
- 13 Q. I mean, did you as a faculty with an issue in  
14 front of the board encourage people -- make them  
15 aware of the impending vote and encourage them  
16 to attend for the purpose of showing support?
- 17 A. I don't know how it was done exactly, whether it  
18 was at a faculty meeting, whether it was simply  
19 in the lunchroom, but there were people -- an  
20 association of people that said, you know, it  
21 would be a nice idea if you would show the  
22 support to the science staff because this is a  
23 very important issue for them. But it was not a  
24 formal--
- 25 Q. That's fine. And association people are the

00157

- 1 union reps?
- 2 A. That's correct.
- 3 Q. So the meeting begins, and you get to the  
4 curriculum item. As the meeting began, was  
5 there public comment?
- 6 A. Yes. That's when I stood up and made my  
7 statement.
- 8 Q. Do you have your statement here, Bert? Did you  
9 give that to me?
- 10 A. Yes, I have it, and I'm sure you do as well.  
11 You have it. I'm not sure under what. But I  
12 have it here. Again, it's handwritten.
- 13 Q. Let me ask you this, do you recall public  
14 comment at the meeting other than your own?
- 15 A. Oh, yes. I probably was one of the first.
- 16 Q. Tell me what you remember about the meeting as  
17 it opened in terms of public comment other than  
18 your own. Was Barrie Callahan there?
- 19 A. I don't know that exactly. I know Lonny  
20 Langione was there.
- 21 Q. Do you recall anything he said?
- 22 A. Yes. But that was in response to what occurred  
23 after I made my presentation.
- 24 Q. Did you start off, Bert?
- 25 A. Pretty much, yes.

00158

1 Q. You've shown me a document that's headed,  
2 Statement Board Meeting 10/18/04. Is that a  
3 copy of your notes in preparation for that  
4 presentation?

5 A. Yes, it is.

6 MR. GILLEN: Let's mark that as 2.

7 (B. Spahr Deposition #2 marked for  
8 identification)

9 BY MR. GILLEN:

10 Q. Bert, take a look over that if you need to and  
11 just-- I guess what I'm trying to do is get at  
12 the thrust of your objections as they were  
13 expressed. Does this document we've marked as  
14 Spahr 2, does that fairly summarize what your  
15 sentiments were?

16 A. Yes. And the purpose of the statement that I  
17 made publicly which was the first statement I  
18 have ever made on this issue before the board  
19 had to do with the fact that the perception in  
20 the community had been that the science  
21 department and specifically the biology  
22 department was in support of what is being done.  
23 And I did this to clarify.

24 And then I pointed out to them what the  
25 science department had done to make every effort

00159

1 to reach a compromise with this curriculum  
2 committee. And there were obviously four  
3 points. The curriculum change I pointed out to  
4 them which is to be voted on this evening many  
5 feel would be railroaded through and has not  
6 followed past practice, and it had not. Past  
7 practice had been there would be input.

8 Mrs. Callahan must have been there because  
9 she had been on the community curriculum  
10 committee, and she had said that that had been  
11 past practice, and she would have known because  
12 she was a member. And the board curriculum  
13 committee usually had had input from the  
14 professional staff, the district curriculum  
15 committee, the community members, and  
16 administrators.

17 I also at that point said, you know, it had  
18 been deemed unlawful, illegal, and  
19 unconstitutional to teach intelligent design  
20 which is a synonym for creationism or creation  
21 science along with evolution. I cited the court  
22 case, okay, and, you know, went through the fact  
23 that it was putting my teachers who were fairly  
24 young, two of which were untenured at the time,  
25 into what I felt was a no-win situation in that

00160

1 they either had to defy a ruling of the school  
2 board or they had to walk into a classroom and  
3 possibly commit an illegal act.

4 And it was at the end of that-- I did ask  
5 Mr. Buckingham directly, though, as part of this  
6 statement if he was going to direct, are you,  
7 meaning the board going to direct my teachers to  
8 teach intelligent design if it appears on the  
9 written curriculum. He did not respond to that  
10 question.

11 I then gave them a challenge and said,  
12 please delay the vote of this issue so that we  
13 can again sit down and attempt to resolve this  
14 with a compromise which is beneficial to all  
15 concerned.

16 At the conclusion of the statement which  
17 was relatively brief, you know, not  
18 antagonistic -- it was I thought very factual  
19 and very professional -- Mr. Buckingham looked  
20 at me and asked me where I thought I got my law  
21 degree. When that question was asked, the  
22 entire audience went ha because they knew my  
23 integrity in this district for 40 years has  
24 never been challenged, okay.

25 A hundred and twenty-five percent of my

00161

1 life has been devoted to teaching in this  
2 district, and they could not imagine that any  
3 member of a school board would treat me with  
4 such disrespect. I looked at him. I said  
5 nothing. And I sat down. I wasn't even going  
6 to dignify what he had said with a response.

7 Now, in addition to that, neither Alan  
8 Bonsell who was president of the board or  
9 Dr. Nilsen who was sitting there ever made any  
10 comment to him about how he had publicly treated  
11 a staff member.

12 Q. Did you look up at the board when Mr. Buckingham  
13 made that comment?

14 A. Oh, yes.

15 Q. I mean, what was their demeanor? I mean, were  
16 they as equally surprised, or could you tell?

17 A. Oh, I couldn't tell with that board and I  
18 couldn't. I mean, I certainly know there were  
19 some that were. I do know right subsequent to  
20 that Mr. Langione who was a former board member  
21 got out of his seat and literally attacked the  
22 board for the treatment in which I received. So  
23 it was a little on the heated side right after  
24 that.

25 But I felt the statement was not

00162

- 1 antagonistic. I felt that it was professional.  
2 And I felt that it was very factual. And I did  
3 it at the direction of the department because  
4 they wanted it known in the public that we did  
5 not agree with everything that was being done.  
6 And yet that was the way it basically had been  
7 displayed in some of the news articles.
- 8 Q. It seems to me, Bert, from what you're saying  
9 that Mr. Langione took exception to the way  
10 Mr. Buckingham had addressed you?
- 11 A. Yes, he did. There were others who did as well.
- 12 Q. Other people spoke during public comment in that  
13 way?
- 14 A. But Mr. Langione is the one that stands out.  
15 He's pretty verbal. He's also an Italian.
- 16 Q. Apart from those comments, Bert, do you remember  
17 anything else in terms of public comment  
18 directed at the proposed curriculum change? I  
19 mean, let me put it this way, how many people  
20 were there at that meeting?
- 21 A. Oh, I have no knowledge of that.
- 22 Q. Can you estimate?
- 23 A. No. I was sitting at a table which was  
24 relatively in the front, and that was so I could  
25 get to the podium without, you know, falling

00163

- 1 over chairs. So I did not look-- It was pretty  
2 crowded. But I can't estimate the number of  
3 people who were in attendance. There were  
4 others who did speak under public comment, you  
5 know, having to do with the curriculum issue.  
6 But I cannot tell you specifically other than  
7 Mr. Langione, and that's primarily because  
8 obviously it affected me.
- 9 Q. Sure. Well, if you look at your notes, Bert,  
10 there's a reference to Lonny Langione, and it  
11 says, what does it mean in a classroom?
- 12 A. Yes. Mr. Langione did pose the question if this  
13 is basically passed as part of the curriculum,  
14 what is this going to mean in the classroom  
15 where the students obviously are going to be in  
16 attendance.
- 17 Q. And then there are some notations beneath that,  
18 Bert. Would you look at those?
- 19 A. May I ask what page you're on.
- 20 Q. On I'm on that page, the first page.
- 21 A. It's tough to read that I must admit. This is  
22 after this thing occurred. I was a little  
23 rattled. Oh, this was where Mr. Langione said  
24 what does this mean in the classroom. And then  
25 what the little note here is, well, read a draft

00164

- 1 to the class. I don't know what paragraph three  
2 means. I really do not know what that means.  
3 If Jen was there, her notes on this may be  
4 somewhat clearer.
- 5 Q. There's a thing that says purpose, protect us  
6 and Dr. Nilsen.
- 7 A. I don't even know what that is referring to. I  
8 think it had to do with the variations of the  
9 drafts. And remember there were three different  
10 drafts, the A, B, and the C. But it was very  
11 confusing. And it was even very confusing when  
12 the vote took place because the people who were  
13 voting on the different forms of the change in  
14 the curriculum didn't even understand what was  
15 going on.
- 16 Q. Well, and how-- Why do you say that, Bert, I  
17 mean that they didn't understand? Did someone--
- 18 A. Because many questions came up before the vote  
19 was taken in the discussion section that people,  
20 you know, wanted clarification, now is it going  
21 to be this one, this one, or this one. And  
22 there were people sitting in the audience who  
23 did not have access to all three of these  
24 documents. And it made it very confusing.
- 25 Q. Let me make sure I understand you. There was a

00165

- 1 whole bunch of different parliamentary maneuvers  
2 that took place that night. Are you referencing  
3 questions among board members as to exactly what  
4 the question was at the time a given vote was  
5 being called?
- 6 A. There were questions among board members as well  
7 as questions of members in the audience because  
8 there was also some confusion among them.
- 9 Q. Sure. For the reasons you've stated, they  
10 didn't have the documents.
- 11 A. I think the board members all had the documents.  
12 I think the people sitting in the audience did  
13 not understand if they were throwing out B or  
14 voting on C. And it was a little on the chaotic  
15 side to say nothing as well as heated, because  
16 there were some people who were very verbal  
17 either in support of or against.
- 18 Q. Tell me what you recall about those people and  
19 their comments. Can you recall any specifics as  
20 we sit here?
- 21 A. Well, not other than the questions that  
22 Mr. Langione posed. I think there were others  
23 who spoke. Mr. Snook often spoke. Barrie  
24 Callahan would often speak. I do not know if  
25 she spoke that evening, though. I mean, after

00166

- 1 what had happened, I was so upset that I really  
2 didn't clearly see what was going on. It just  
3 clouded what I perceived at that point because,  
4 I mean, I even had other board members or in  
5 some of the -- well, Dick Brown, if you will,  
6 and even Noel who came up to me after that  
7 meeting and attempted to apologize on behalf of  
8 what had occurred. At that point I just wanted  
9 to get out of there, and I did, but.
- 10 Q. Am I right, Bert, you felt that Mr. Buckingham  
11 had insulted you?
- 12 A. Yes, I did.
- 13 Q. Look at the board now. There's some public  
14 comment, and I understand why you're saying you  
15 don't remember the specifics. Do you recall any  
16 of the board members speaking to the substance  
17 of the issue that was in front of them, the  
18 curriculum change and these issues? Do you  
19 recall--
- 20 A. In terms of the comments of what the different  
21 documents were as to what the difference was  
22 between A, B, and C?
- 23 Q. Yes.
- 24 A. I'm not-- No, I do not remember that.
- 25 Q. When you made this statement to the board, you

00167

- 1 know, you've referenced certain legal  
2 information and that, were you relying on the  
3 materials that you've provided to me earlier  
4 that addressed the legality of teaching?
- 5 A. That's correct.
- 6 Q. If you look at your handwritten notes, there's a  
7 series of comments there. There's that purpose,  
8 protect us and Dr. Nilsen.
- 9 A. I don't know what that means.
- 10 Q. Beneath that, why it wasn't negative, does that  
11 trigger any recollection on your part?
- 12 A. Simply the fact that the science department did  
13 everything that was humanly possible to  
14 cooperate with this curriculum committee and  
15 showed a willingness to do short of, you know,  
16 getting the word intelligent design or  
17 creationism into the biology classrooms  
18 everything that we thought might possibly  
19 appease them.
- 20 They did agree to point out gaps in  
21 Darwin's theory. Obviously at that point in  
22 time the mural was gone, so we didn't have that,  
23 you know, contentious thing to deal with. And  
24 we felt that, you know, we worked as positively  
25 and professionally as any department was able to

00168

1 do. And, therefore, we were tired of being  
2 perceived by the community as being anti-God,  
3 anti-whatever.

4 And unfortunately that is how we were  
5 perceived because we were so much against this  
6 intelligent design I think it was perceived in  
7 the wrong way. You know, intelligent design has  
8 a place, you know, philosophy, comparative  
9 religions. It just isn't in the science  
10 classroom in our opinion.

11 Q. Certainly. And tell me about that sense you had  
12 of the perception of the community. Was there--  
13 Did you have conversations yourself, or what are  
14 you deriving that from, Bert?

15 A. Well, I got to a point that I avoided going  
16 places in this community, whether it be the food  
17 store, you know, whether to the sandwich shop or  
18 whatever because you could literally during all  
19 of this commotion being in the newspaper not go  
20 anywhere and have somebody in the community  
21 knowing that I've been here for 40 years ask me  
22 questions on this issue. And I was not going to  
23 get into a public debate, you know, over ID,  
24 creationism, evolution, in any type of a  
25 nonprofessional setting.

00169

1 So there were some churches that were very  
2 vocal in their perception of our department  
3 because we were opposed to this intelligent  
4 design. So it became a very uncomfortable  
5 situation.

6 Q. Well, and I just want to get a sense for that.  
7 I don't want to burden you. But there's sort of  
8 two-- I think I'm getting two themes out of  
9 what you're saying. One is it became a nuisance  
10 in that it was such a public controversy people  
11 would ask you--

12 A. You could not open a newspaper probably anytime  
13 in the last year and a half and not see the book  
14 Of Pandas and People on the page. And of course  
15 that just kept fueling the fire. And so it  
16 became-- You know, it's a very small community.  
17 It's a very religious community. It was  
18 basically spoken about in Sunday school, you  
19 know, in terms of, you know, we need to get out  
20 and get the people of the church in support of,  
21 you know, whatever. And it just became, I don't  
22 know whether nuisance is the word, but it became  
23 very uncomfortable because you couldn't do your  
24 job.

25 Q. That's what I want to get at. There's plainly

00170

- 1 two elements to this, and I want to get at your  
2 basis for each of them. The first is the notion  
3 that you couldn't get out without being asked  
4 questions. That's one thing. Now, you've also  
5 told me about some churches and statements made  
6 at churches and so on. Were they made at your  
7 church?
- 8 A. No. I do not live in this area, and I also do  
9 not attend church in this area. And that is  
10 hearsay from me. I do not have firsthand  
11 knowledge of that. I believe you will get a  
12 better answer to that question from Rob Eshbach  
13 whose father is a minister in this community.
- 14 Q. Was it Rob Eshbach who communicated to you this  
15 phenomena you described of discussions of the  
16 issue in church?
- 17 A. No, it was not.
- 18 Q. Who else?
- 19 A. I can't tell you specifically who it was. It  
20 was members of the community who attend some of  
21 the more fundamental churches in this area that  
22 were in attendance. Obviously the one gentleman  
23 on the school board who was appointed is also a  
24 pastor in a relatively fundamentalist church.
- 25 Q. Who is that?

00171

- 1 A. Reverend Rowand, R-o-w-a-n-d, I believe. He was  
2 one of the more recently appointed members after  
3 the others had resigned.
- 4 Q. But it's essentially individuals coming up to  
5 you and reporting what--
- 6 A. Yes.
- 7 Q. In the portion of the notes we're looking at,  
8 Bert, there's this notion about why it wasn't  
9 negative. Is that a series of thoughts about  
10 why your statement was not negative?
- 11 A. Yes. It's referring to the preceding statement  
12 that was read. It was not intended to be  
13 negative. It basically was to point out the  
14 cooperation the department had with both the  
15 curriculum committee and the administrators.
- 16 Q. That's sort of what I surmised. I want to ask  
17 you then, you said you jotted down these notes  
18 at the meeting, was there a statement to the  
19 effect that what you had said was negative? The  
20 notes appear as though you were rebutting an  
21 assertion.
- 22 A. No, that was not the case. No, that was not the  
23 case.
- 24 Q. Beneath the portion of the notes we're referring  
25 to now there's a hash mark that sort of brackets

00172

1 off the material on the top of the page from  
2 what comes below. Would you look at what is  
3 below that hash mark?

4 A. I'm looking there. Thank you.

5 Q. Onto the next page and then on that next page  
6 there's another section marked off by hash  
7 marks, for lack of a better word, under the  
8 heading, Summary. Looking at those, Bert, do  
9 they refresh your recollection as to any  
10 conversations that were had in connection with  
11 the board meeting that was held on October 18,  
12 2004?

13 A. I'm not sure they were conversations. There had  
14 been some discussion as to whether we as members  
15 of the science department were going to be able  
16 to speak to media. And we were told we may talk  
17 to whomever but it makes obviously much more  
18 sense not to talk. But there obviously was no  
19 given gag order. We were not told we could not  
20 communicate with media.

21 Now, oftentimes at the board meetings there  
22 were cameras there from ABC. I mean, there  
23 were, you know, people everywhere. And the  
24 court reporters -- or court reporters, I'm  
25 sorry, the board reporters, Joe Maldonado was

00173

1 there, Heidi I think Bubb was there, and it was  
2 not uncommon for them-- They actually came up  
3 to me after my statement and wanted to have the  
4 statement, and I did not give it to them.

5 Q. Why is that, Bert?

6 A. Well, I just-- You know, I didn't need to see  
7 it in print. I had seen enough in print. But I  
8 mean, you know, they would always come, and we  
9 were actually given the opportunity to speak to  
10 whomever but were told, you know, temper what  
11 you say because you could, in fact, be held  
12 accountable for it.

13 And, you know, Sandy, the Sandy that's  
14 being referred to here was at that point  
15 president of the association. And she would  
16 basically be involved in covering statements.  
17 And then she would work oftentimes between the  
18 association and to Dr. Nilsen.

19 Q. Looking at that, Bert, do you recall  
20 conversations with Dr. Nilsen or Mike Baksa  
21 after the vote was had and the meeting adjourned  
22 on the evening of October 18th?

23 A. No. I can honestly tell you when that meeting  
24 was adjourned I got out of there.

25 Q. So these notes then, are they from the days

00174

1 following the October 18th meeting?

2 A. Well, the Gary Sutton note has to do-- He's a  
3 radio announcer that was basically doing a, I  
4 don't know, a show on the radio on Tuesday  
5 morning, and this was Monday night, having to do  
6 with this issue of evolution and intelligent  
7 design.

8 I think these were simply notes that came  
9 out at a later time. I'm not positive that they  
10 came from that board meeting because the one  
11 down here where it says, number four, Brian in  
12 earth science, how do we deal with the fossil  
13 record, that would never have come up at that  
14 board meeting. So I believe this is basically  
15 notes that came from something else, okay,  
16 subsequent to that board meeting.

17 Q. That's what I was asking. The note you just  
18 referenced, Brian in earth science, what is  
19 that?

20 A. Brian Baun is a first year teacher. He teaches  
21 earth science. And within the earth science  
22 curriculum, there was this time line which had  
23 to do with fossil records. And it had to do  
24 with how are we now to deal with that and is he  
25 going to be impacted with this creationism, ID,

00175

1 or evolution. And basically because he is a  
2 first-year teacher should he simply remove that  
3 section from his curriculum or, you know, is he  
4 going to be held accountable for it.

5 Q. Let me see, Bert, I know I spoke with Jen Miller  
6 yesterday, and she said after the curriculum  
7 vote she had issues about what does this mean  
8 for my classroom instruction. Is Brian's  
9 concerns of the same nature?

10 A. Yes, would he then be able to deal with fossil  
11 records -- you know, obviously there are  
12 processes with fossil records that, you know,  
13 evolve that you see in Darwin's theory -- or is  
14 he now going to be expected to avoid this to  
15 avoid controversy. But the same thing, how  
16 would this impact on how he is going to present  
17 material in his classroom.

18 See, most people it only affected the  
19 biology classroom. But because he taught earth  
20 science and fossil records, he was concerned as  
21 a first-year teacher whether it would also  
22 impact on him.

23 Q. Between October 18th and November 1, 2004--  
24 Well, let me ask this before we leave that, do  
25 you recall any comments by the board members on

00176

- 1           October 18th, 2004 on the evening other than  
2           Mr. Buckingham's statement?
- 3   A.       Not specifically. I know there were  
4           interchanges with board members. They could  
5           often be very curt with each other in addition  
6           to being curt with some people in the audience.  
7           Specifically I do not remember what the  
8           discussion was among them.
- 9   Q.       So when you left this meeting, Bert, you say you  
10           got out of there, did you talk with your science  
11           faculty that evening before you left?
- 12   A.       No, because I think I got out of there, and some  
13           of the others remained behind. They were  
14           speaking to-- Reporters were there. Some of  
15           the other board members came over. I think the  
16           Browns came over. I think as you see later when  
17           the Browns resigned, you know, over this issue  
18           that we always felt that they were on our side,  
19           whatever that means. She certainly would  
20           listen, you know, to what we had to say, and she  
21           had done some research on her own on this issue.  
22           And she oftentimes would walk over and speak to  
23           us, but those two. Noel Wenrich also I believe  
24           may have come over and exchanged a few words.  
25   Q.       But other than that, nothing?

00177

- 1   A.       Not that I can recall.
- 2   Q.       How about in the period between the October 18th  
3           meeting and say the beginning of November, do  
4           you recall any discussions with the  
5           administration about the curriculum change and  
6           its--
- 7   A.       October the 28th we were presented the draft  
8           which was to be read to the biology classes  
9           which was written by Mr. Baksa.
- 10   Q.       Were you part of that process, Bert?
- 11   A.       Writing the draft?
- 12   Q.       No. I mean, I understand that the first draft  
13           came from Mr. Baksa. Is that correct?
- 14   A.       Correct.
- 15   Q.       And then some changes were made to it by Jen  
16           Miller?
- 17   A.       That's correct.
- 18   Q.       Were you part of the process of making changes  
19           coming from the science faculty?
- 20   A.       Jen pretty much made most of the changes on that  
21           because obviously it had to do with biology. It  
22           had to do with the definition of a theory. But  
23           she was the one who primarily was the one who  
24           was in charge of directing the correction of  
25           anything that was scientifically inaccurate

00178

- 1 because Mr. Baksa is not a science person. And  
2 we were directed actually by Tom Scott and I  
3 think Clayton Gibbs was there at the same time  
4 after a meeting at the Shiloh UCC Church, so it  
5 was an association meeting, and they were both  
6 in attendance. And we obviously had a copy of  
7 the document with us and said, okay, now what do  
8 we do with this. And they said, if it's  
9 scientifically inaccurate, we have the  
10 responsibility to correct the document, and that  
11 is exactly what we did. I don't know how many  
12 major changes were there. But there were a few.
- 13 Q. Mr. Scott is an attorney who represented you  
14 through the PSEA?
- 15 A. Yes.
- 16 Q. How about did you participate, Bert, in the  
17 reworking of the statement in any way?
- 18 A. No, I did not.
- 19 Q. You've indicated that your meeting with  
20 Mr. Scott took place on November 1st. If you'd  
21 look at Miller 3 at the agenda for the  
22 November 1st meeting, did you go to that  
23 meeting?
- 24 A. I went to whatever meeting they interviewed all  
25 of the candidates. I do not know exactly what

00179

- 1 date that is. Obviously I went to one that was  
2 on-- Oh, no, I'm sorry, that was the  
3 November 18th meeting where I went and all the  
4 candidates were being interviewed. To my  
5 knowledge, I did not go to the November 1st  
6 meeting. There are no notes here. These are  
7 all notes that are in Jen Miller's handwriting.
- 8 Q. You went to the November 18th meeting, Bert?
- 9 A. Yes. That was where they interviewed the  
10 candidates to fill the vacancies.
- 11 Q. Was there any discussion had at that meeting  
12 relating to the change to the biology  
13 curriculum?
- 14 A. Some of the questions that were asked of the  
15 candidates involved the ID issue. You will see  
16 that following that those are my handwritten  
17 notes concerning each of the candidates.
- 18 Q. Are they the notes that begin with Nightline  
19 from ABC News filmed the entire meeting on top?
- 20 A. Yes. I will say in many of those interviews  
21 they tried or attempted to avoid that  
22 contentious topic. They kind of scoped it in  
23 the -- and they formed the question, do you  
24 believe strongly about a topic and would you try  
25 to persuade others to follow.

00180

1           On a few occasions they did specifically  
2           come out and ask candidates how they felt about  
3           the change in the curriculum. They certainly  
4           prepared and did their homework some questions  
5           that would put certain of the candidates in some  
6           rather dubious positions.

7   Q.       Well, tell me about that, Bert. Why do you say  
8           that?

9   A.       Well, I speak specifically to Mr. Rehm.  
10          Mr. Rehm was obviously my former physics teacher  
11          who left the district, still has children in the  
12          district, is very concerned about education.  
13          And if you go to Bryan, they ask him the  
14          question in essence-- Let me find it because I  
15          was appalled. Yes, Mr. Buckingham asked him  
16          have you ever been accused of abusing a child,  
17          and there was dead silence in the room at that  
18          point.

19          Now, if Mr. Buckingham had known anything,  
20          if he was now a new teacher in a new district,  
21          he would have had to have all of his security  
22          clearances in order to get there. But this is  
23          what I meant about it would shed -- did  
24          Mr. Buckingham know something about this  
25          gentleman that no one else seemed to know. But

00181

1           it cast this.

2           Another one was Monica Marlowe. Monica  
3           Marlowe was the mother of one of the biology  
4           teachers in the district, and they specifically  
5           asked her if she owns property in the Dover  
6           district. She does not. She rents. And it was  
7           just things like this that, you know, we just  
8           felt gave certain candidates more credibility  
9           than others.

10          You will notice that several of the  
11          candidates who applied for the replacement  
12          positions are candidates who now ran and  
13          successfully won the Democratic ticket for the  
14          recent primary elections.

15          But it was interesting as we sat there, we  
16          all knew -- when I say we meaning the members of  
17          the science department that were in  
18          attendance -- knew who was going to be selected  
19          before anybody was ever interviewed. And we  
20          were right on all of them but one.

21   Q.       Why is that?

22   A.       Well, because we knew what the backgrounds were  
23          and which members were in agreement with some of  
24          the other board members. And we felt that this  
25          was going to be a sure thing. And for all

00182

- 1 practical purposes, we-- The only one we  
2 weren't right on was the last woman that was  
3 elected.
- 4 Q. Who was that?
- 5 A. What was her name. It might have been Sherrie  
6 Leber because you'll notice they took how many  
7 different votes and they couldn't get the last  
8 one. Then Leber finally came in on the fifth  
9 ballot when you get to the end of the Page 6, if  
10 you will. Now I just was keeping--
- 11 Q. Score.
- 12 A. --a running total, yes. So that was certainly  
13 an interesting evening.
- 14 Q. Now, this vote is a vote that's made by the  
15 board?
- 16 A. Oh, yes. No one else had any input into this.
- 17 Q. And you say that you had the sense for which  
18 candidates would be, what should I say, the most  
19 attractive to the board?
- 20 A. That's correct, because they philosophically  
21 agreed with the present board members who were  
22 there. Obviously we felt very strongly that the  
23 pastor was going to be selected and was. There  
24 were some others. I'm trying to think if he was  
25 on this list. We were pretty much assured that

00183

- 1 Bryan Rehm wasn't going to get there.
- 2 Q. Why?
- 3 A. Well, first of all, being a former teacher, he  
4 was in the science department. He certainly was  
5 opposed to intelligent design and, you know, is  
6 relatively articulate so that, you know-- But  
7 that was the evening in which they interviewed  
8 the candidates.
- 9 Q. Apart from the interview process, any comments  
10 directed to the curriculum that you can recall?
- 11 A. I do believe that some of the candidates were  
12 asked how they felt about intelligent design.  
13 Or, you know, I think they disguised it in if it  
14 were a strong issue and you had a feeling, would  
15 you basically try to convince others to do so.
- 16 Bryan Rehm specifically said I am against  
17 intelligent design. If you see the margin in my  
18 notes, this is a death sentence. Well, I mean,  
19 now, remember these are my notes. I didn't  
20 realize they were going to have to be shared  
21 with half the world. And, I mean, we wrote  
22 down-- You know, we knew as we were going  
23 along. Over here is a death sentence. Cynthia  
24 Corbett, okay, doesn't agree with the policy on  
25 creationism. Well, we knew that was done. So,

00184

- 1 you know, as we sat there, we had our own  
2 perceptions of the way things were going to go.  
3 Q. How about let's look at board meetings for the  
4 remainder of the 2004 period, and just did you  
5 attend those board meetings?  
6 A. Unless there was a reason for me to be there,  
7 once this issue basically had been resolved with  
8 the curriculum, I didn't attend as many as some  
9 of the others did.  
10 Q. So do you think you attended them from this  
11 board meeting we just got done discussing?  
12 A. I was present when they interviewed the  
13 candidates. I do not remember attending board  
14 meetings in December. And these notes that are  
15 here are not mine.  
16 Q. How about were you there when Angie Yingling  
17 resigned?  
18 A. No. Well, I don't remember that. I was there  
19 when the Browns resigned.  
20 Q. That's what I was going to ask you next.  
21 A. I can't tell you when that was, but I remember  
22 Casey reading--  
23 Q. Her statement?  
24 A. Right.  
25 Q. Did you speak with Casey Brown after she read

00185

- 1 her statement?  
2 A. Speak with her, I went up, and other members of  
3 the department thanked her for her efforts on  
4 our behalf, you know, told her we appreciated  
5 the efforts that she had made to try to resolve  
6 the issue between the books and the curriculum.  
7 Yes, that is what I said to her.  
8 Q. How about Noel Wenrich, were you there when he  
9 resigned?  
10 A. Yes. And I knew what date-- In fact, one of  
11 the board agendas has that on as to when they  
12 would be leaving. I did speak to him very  
13 briefly, but I did not to the other lady who was  
14 moving to Florida. I did not know her.  
15 Q. Jane Cleaver?  
16 A. Yes, and did not have any reason to work with  
17 her. Noel oftentimes came in because he was  
18 involved with the building project, and there  
19 were eight science rooms that had to be redone.  
20 So there were some issues involving the building  
21 project.  
22 Q. And you had come to know Noel?  
23 A. He was a student while I was a teacher here.  
24 Q. And you developed-- I guess what I hear you  
25 saying you talked to Noel more than Jane because

00186

- 1 you had a relationship with Noel?
- 2 A. No, I wouldn't say that. I did speak to Noel,  
3 but it was on very rare occasions. Jane I  
4 didn't have any connection to at all. I just  
5 had no reason to have dealings with her.
- 6 Q. Let's look at the period from October 18th  
7 forward. Have you spoken with any of the  
8 persons who were on the board as of October 18th  
9 about the curriculum change from October 18th,  
10 2004 to the present?
- 11 A. Have I spoken to any members of the board after  
12 the curriculum change was voted in?
- 13 Q. Right, to the present period about the  
14 curriculum change.
- 15 A. Not to my knowledge. Once it had been put in,  
16 we felt we were going to have to deal with it.  
17 Talking was going to get us nowhere. It hadn't  
18 in the future -- or hadn't in the past, I mean.
- 19 Q. How about I know that some communications were  
20 had between the administration and the science  
21 department, the science faculty relating to the  
22 formulation of the statement.
- 23 A. That's correct.
- 24 Q. I know you said you didn't personally play a  
25 role in the input from the science faculty into

00187

- 1 the statement, but did you have discussions with  
2 the administration about the statement after  
3 October 18, 2004?
- 4 A. There were discussions among the staff as to  
5 what input the department should have as Jen  
6 actually wrote it up, you know, what did we  
7 think might be changed. But Jen after she heard  
8 our suggestions is the one who was in charge of  
9 writing that.
- 10 Q. So she was like the point person on the--
- 11 A. Yes, because it dealt with biology. And as I  
12 said, she was the lead teacher and certainly the  
13 most senior teacher in biology.
- 14 Q. Who else participated in that sort of give and  
15 take surrounding the statement?
- 16 A. I can't answer that. My-- And I'm guessing  
17 would have been Bob Linker and Leslie Prall who  
18 are the other two biology teachers.
- 19 Q. So essentially they'd be relating to Jen?
- 20 A. Yes, not to me.
- 21 Q. I know there came a time when the department  
22 went on record as not wanting to read the  
23 statement. Bert, just give me your reasons for  
24 that as you see them.
- 25 A. We felt that if the science teachers in the

00188

1 department read the statement that they were  
2 going to give credibility to this intelligent  
3 design, and we felt it was not science. And,  
4 therefore, we did not want to become part of  
5 that.

6 Q. Bert, when you say you feel intelligent design  
7 theory is not science, give me just a sense for  
8 the basis for your opinion on that issue.

9 A. Intelligent design we believe is a belief.  
10 Beliefs cannot be proven scientifically in a  
11 laboratory; and, therefore, we feel intelligent  
12 design does not belong in a science class.

13 Now, we were never opposed to teaching  
14 intelligent design. We said it belongs -- could  
15 belong in a philosophy class, it could belong in  
16 comparative religions, you know, in some  
17 elective. But we just felt that it had no merit  
18 in the science classroom.

19 Q. Do I understand you correctly, Bert, that your  
20 opinion in that regard is based on this notion  
21 that scientific assertions are provable through  
22 lab science?

23 A. Testable and repeatedly you get the same  
24 response. A belief cannot be tested; and,  
25 therefore, as far as we're concerned, a belief

00189

1 is not science.

2 MR. GILLEN: Let me just take a brief  
3 break.

4 (Recess taken)

5 BY MR. GILLEN:

6 Q. Bert, towards the end there you mentioned that  
7 one of the reporters asked you for your  
8 statement, a copy of your statement, and you  
9 declined to give it to him, you didn't want to  
10 see it in print. Have you had exchanges with  
11 the various reporters that cover the school  
12 district in connection with this dispute?

13 A. I have had one or two. Because they were  
14 primarily interested in questions being answered  
15 in biology, they usually spoke to either Jen  
16 Miller or Rob Eshbach instead of me. On a few  
17 occasions I have been interviewed. I have been  
18 contacted by people in the media. Oftentimes I  
19 refer them to Jen Miller. But Joe Maldonado  
20 which is a writer for the local newspapers came  
21 to the school and interviewed the three of us on  
22 this issue.

23 Q. Let me ask you about them. Have you had  
24 interviews with Joe Maldonado yourself?

25 A. Not alone, no.

00190

- 1 Q. How about in a group?  
2 A. Yes. It was Jen Miller, Rob Eshbach, and  
3 myself.  
4 Q. Have you had a chance to review his reportage of  
5 those interviews and more specifically  
6 statements that he may have attributed to you?  
7 A. Yes. And they are in the file of newspaper  
8 articles.  
9 Q. Did you find his reportage accurate--  
10 A. Yes, I did.  
11 Q. --inaccurate? How about the same question for  
12 Heidi Bernard Bubb, did she attribute quotes  
13 to--  
14 A. I never interviewed or answered questions to her  
15 specifically. If she attributed quotations to  
16 me, it was because of being present in a meeting  
17 where I read the statement. I'm not sure she  
18 was there. But I did not ever speak to her  
19 specifically.  
20 Q. Lori Lebo, did you have--  
21 A. I've never spoken to her specifically either.  
22 There was a-- When the ABC News press was here  
23 and videotaped that one entire meeting, I did  
24 speak briefly to the person from that  
25 organization. The one that I specifically

00191

- 1 remember, and Jen and Rob and I were all three  
2 there, was the gentleman from the very  
3 well-known science journal called Science where  
4 he came to interview us. And I believe that may  
5 have been in December. I don't remember  
6 specifically. And his article which was printed  
7 in the Science magazine was very accurate.  
8 Q. When we began this deposition, Bert, you  
9 referenced some discussions you had had with  
10 plaintiffs' counsel from the fall of 2004  
11 through I think it was April or May of this  
12 year. As you sit here today, do you recall any  
13 subject matter that you discussed with them that  
14 I haven't asked you questions about today?  
15 A. When I spoke to Eric most recently, he had  
16 called to ask me the accuracy of the  
17 Dr. Peterman memo, and that was the most recent  
18 contact and probably in the last few months the  
19 only contact I have had with him.  
20 Now, we exchanged back and forth phone  
21 messages on the answering machine probably three  
22 days in a row. He'd call, I'd call, and he'd  
23 call back. But it basically was to ask me about  
24 the Trudy Peterman memo because that document  
25 was not present in any of the material that I

00192

1 sent to anybody because I did not have it in my  
2 possession, or at least if I do, it was not with  
3 everything else. Do I remember that  
4 conversation and was -- what was written in the  
5 memo as accurate as I could remember it, and I  
6 responded to him that it was.

7 Q. Anything else, Bert?

8 A. Yes. And something that I think has been behind  
9 a lot of this, the science department, at least  
10 the present members who are still here, have  
11 always felt that this entire issue revolved  
12 around that mural that was in that room several  
13 years ago where obviously it was the picture on  
14 that one document where you had what appeared to  
15 be a monkey, okay, evolving into a man. And  
16 that was why when it was first found missing--  
17 And I found it on the exact weekend that it was  
18 moved because I know where things are. And when  
19 something 16 feet by 4 feet disappears, it's not  
20 difficult to find.

21 And of course I questioned the janitorial  
22 staff as to who did anything with it, you know,  
23 who directed you to move this, and they knew of  
24 nothing and then of course contacted the  
25 assistant principal at that point was Mr. Larry

00193

1 Redding and asked him to find out what he could  
2 about whatever happened to that because, as I  
3 said, it was a gift. It was a student project  
4 and whatever and then came to find out that  
5 Mr. Reeser who was the head of building and  
6 grounds had come in during the weekend and had  
7 removed it from the room and destroyed it. I  
8 was told that it was burned so that it would  
9 never again appear in the classroom.

10 Well, obviously when I found that out as  
11 department chair because it was a gift to the  
12 science department came to Dr. Nilsen, and I  
13 asked Dr. Nilsen what is going to happen to a  
14 district employee who basically steals material  
15 out of a room and destroys it. And Dr. Nilsen  
16 told me at that point in time that it was none  
17 of my concern, that it was a personnel issue,  
18 and that he would take care of it.

19 And it was at that point that we kind of  
20 got a hint that, you know, this issue is still  
21 out there in the community. You know, it's a  
22 very strong religious community. And there were  
23 people and openly said so were offended by the  
24 fact that that mural or picture, whatever you  
25 wanted to call it, sat on the chalkboard in the

00194

1 back of the room.

2 And as Mr. Reeser's granddaughter was in  
3 the school at that time, she was coming through  
4 the science curriculum, and I don't know whether  
5 there was an open house, but there was  
6 something, and the family saw it, you know,  
7 sitting in the rear of the room. And, you know,  
8 he certainly voiced his displeasure.

9 But we always felt-- And that's why when  
10 Mr. Buckingham at a subsequent -- and that was  
11 years later -- meeting, you know, made the  
12 statement about monkeys and man together, that  
13 was it for me because that's where I truly felt  
14 this whole thing stemmed from, that he, you  
15 know, truly believed, and I'm not sure why, that  
16 we taught man evolved from a monkey. So, I  
17 mean, that I think has been at the center of  
18 this controversy.

19 Now, had the mural never been in our school  
20 building, would this have occurred, I can't  
21 answer that. But I do know that that was the  
22 inflammatory item that, you know, certainly  
23 caused discussion.

24 Q. Well, I mean, and that's important to you. So  
25 let me ask you a few more questions. I'm

00195

1 looking at Miller 4 which has that history -  
2 mural at the beginning of it, and I see that the  
3 mural disappeared according to this document  
4 August 2002. Is that right?

5 A. It was over a weekend. And we had come in for  
6 in-service day. I don't know, at that point it  
7 might have been a Thursday, Friday, Monday, and  
8 Tuesday. And between Friday and Monday the  
9 mural disappeared.

10 So when I went back into the room Monday  
11 morning to check on books, if they had their  
12 books that they needed to begin the new year,  
13 where is it. I mean, you know 16 feet by 4 feet  
14 is big, and, you know, it wasn't there. And  
15 that was when we went on a hunting expedition to  
16 find out what had happened to it.

17 Q. Then you said that you obviously learned some  
18 details about how the mural came to the  
19 attention of was it Mr. Reeser?

20 A. I don't know whether it came to the attention,  
21 but he was the one who literally removed it from  
22 the school and burned it. That's what I was  
23 told.

24 Q. Who told you that?

25 A. I believe Mr. Redding who was then the assistant

00196

1 principal of the high school at the time.

2 Q. Was Mr. Redding as assistant principal the  
3 person who investigated the--

4 A. I believe he was.

5 Q. You've referenced a PTA or parent/teacher --  
6 some sort of what did you call it, open house?

7 A. Yes. We have since we're on block schedule an  
8 open house for parents to come and follow their  
9 student's schedule twice a year. And I believe  
10 that -- now, obviously the previous year,  
11 because it is now gone. The mural stood in that  
12 room two or three years. The young man who  
13 presented it I believe graduated in 1998. So  
14 this probably had been standing for a good two,  
15 three years. And he gave it at the end of the  
16 year.

17 So it was there that if you came into the  
18 room it obviously was visible. And sometime in  
19 that interim community members had come in.  
20 They saw it sitting back there. Now, I'm not  
21 sure if the open house they would ask about it,  
22 but it was visible. And most people's  
23 perception when you see that particular picture  
24 is that somebody believes that man came from a  
25 monkey. Now, to my knowledge, that was never

00197

1 taught. And that was the young man's perception  
2 as his art project of what he saw.

3 Q. What I'm trying to get at, Bert, is I know that  
4 we've got some specific information that's tied  
5 to Mr. Reeser. And then on the other hand you  
6 have this sort of sense of the community. And  
7 what I'm trying to do is get at what you're  
8 relying on there. I mean, plainly Mr. Reeser  
9 was offended and acted on it.

10 A. Do I know whether he was ever directed by  
11 someone to do that, the answer to that question  
12 is no. I never spoke to Mr. Reeser on the  
13 issue, no.

14 Q. Did any members of the community come to you  
15 personally and express objections to that mural?

16 A. Not to me personally they did not.

17 Q. Were you aware of members of the community  
18 coming to your science faculty and expressing  
19 objections to the mural?

20 A. I know that the school district would not  
21 permanently hang the mural in that particular  
22 room, so it was not, you know. Now, I again do  
23 not know again who directed the janitorial staff  
24 to refuse to do that. But they would not  
25 permanently adhere it to the wall.

00198

1 Q. Again, I think earlier you said Mr. Reeser was  
2 the head of the buildings and grounds?

3 A. Yes, he was. But there were-- I don't know  
4 whether it would have been the responsibility of  
5 the janitors at the high school to do it.

6 Now, yesterday they were hanging all the  
7 other murals now that all the walls and the  
8 construction has been done. So, I mean, they  
9 were not our janitorial staff but are members of  
10 the district staff that were hanging those huge  
11 murals all over the hall.

12 But we knew that when they refused -- well,  
13 not they, were directed not to adhere it  
14 permanently to a wall that there obviously was  
15 some controversy and of course was the reason  
16 why it was sitting on the chalkboard tray.

17 Q. I just want to make sure I understand you. Did  
18 you say yesterday it was district staff hanging  
19 the murals in the building now that the building  
20 project has been completed?

21 A. Yes. And I don't even know who those gentlemen  
22 were, but I know they are not janitors who are  
23 normally in our building.

24 MR. GILLEN: Bert, I have no further  
25 questions. I thank you for coming.

00199

1 (The deposition concluded at 4:39 p.m.)  
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COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF YORK :  
I, Bethann M. Mulay, Reporter and Notary  
Public in and for the Commonwealth of  
Pennsylvania and County of York, do hereby  
certify that the foregoing deposition was taken  
before me at the time and place hereinbefore set  
forth, and that it is the testimony of:

BERTHA E. SPAHR

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  
or related to any of the parties to the  
foregoing cause, or employed by them or their  
attorneys, and am not interested in the subject  
matter or outcome thereof.

Dated at York, Pennsylvania this 25th day  
of May, 2005.

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Bethann M. Mulay  
Registered Professional Reporter  
Notary Public

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