

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

1	TAMMY J. KITZMILLER, et al.,	:	
2		:	
3	Plaintiffs	:	
4	vs.	:	Case Number
5		:	4:04-CV-02688
6	DOVER AREA SCHOOL DISTRICT;	:	
7	DOVER AREA SCHOOL DISTRICT	:	
8	BOARD OF DIRECTORS,	:	
9	Defendants	:	

AFTERNOON SESSION

TRANSCRIPT OF PROCEEDINGS
OF BENCH TRIAL

Before: HONORABLE JOHN E. JONES, III

Date : October 12, 2005

Place : Courtroom Number 2, 9th Floor
Federal Building
228 Walnut Street
Harrisburg, Pennsylvania

COUNSEL PRESENT:

ERIC J. ROTHSCHILD, ESQ.
WITOLD J. WALCZAK, ESQ.
STEPHEN G. HARVEY, ESQ.
THOMAS B. SCHMIDT, III, ESQ.

For - Plaintiffs

PATRICK T. GILLEN, ESQ.
ROBERT J. MUISE, ESQ.

For - Defendants

Lori A. Shuey, RPR, CRR
U.S. Official Court Reporter

I N D E XWITNESSES

<u>For - Plaintiffs:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dr. Brian Alters		3	60	65
Cynthia Sneath	75	101		
Steven Stough	109			

1 THE COURT: We'll pick up then with
2 Mr. Muise's cross-examination of Dr. Alters.

3 MR. MUISE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MUISE:

6 Q. Good afternoon, Dr. Alters.

7 A. Good afternoon.

8 Q. Sir, you're not a scientist. Correct?

9 A. Correct.

10 Q. And you've never actually taught biology in
11 a public high school. Correct?

12 A. Correct.

13 Q. You have no specific training or experience
14 with regard to the Pennsylvania standards for teaching
15 science. Isn't that correct?

16 A. Correct.

17 Q. Sir, in your direct, you indicated that you
18 coauthored a biology textbook, a college-level biology
19 textbook entitled, *Biology: Understanding Life*. Is
20 that correct?

21 A. Yes.

22 Q. And your coauthor was your wife?

23 A. Yes.

24 Q. And you and your wife hold Ph.D.s in
25 education. Correct?

1 A. Correct.

2 Q. And neither you nor your wife are
3 scientists. Correct?

4 A. Correct.

5 Q. Now, I gather from your testimony and what
6 you've provided in your expert reports in this case
7 that one of your principal concerns is with students
8 bringing misconceptions to the science classroom. Is
9 that accurate?

10 A. Yes.

11 Q. And you have studied students'
12 misconceptions concerning evolution. Correct?

13 A. Yes.

14 Q. You haven't done, yourself, any studies as
15 far as how students reach these misconceptions. Is
16 that correct?

17 A. I've done studies in interviewing
18 thousands -- well over a thousand students in how they
19 report learning those misconceptions.

20 Q. But in terms of how they reach those
21 misconceptions, you haven't done any studies on that?

22 A. It's a technical point here. It's a little
23 complex. To be able to do a study on how they would
24 learn those misconceptions, it might be done something
25 as follows: You might have to take a couple hundred

1 students, randomly assign them into two groups, a
2 control group, a test group. The control group would
3 be evolution only. The test group would be evolution
4 and intelligent design, say.

5 And to be able to run that and then run it
6 through and see what the difference is, most
7 university professors that I'm aware of at most
8 universities in North America that I'm aware of,
9 certainly my universities, require you to go through a
10 human subjects review board to approve your research
11 ahead of time on human subjects.

12 They ask in there, is there any deception of
13 the students, and I would have to respond, yes, we're
14 going to teach that intelligent design in the
15 treatment group is an alternative scientific theory
16 and teach it as science to the students. They then
17 respond, do you predict that the good of the
18 experiment will outweigh the detriment to the
19 deception of the students, and I'd have to respond,
20 no, I don't think so.

21 So that type of research that you're
22 requesting is pretty much considered unethical by
23 ethical review boards for human subjects.

24 Q. So, again, sir, the answer is that you have
25 not done any studies as far as how students reach

1 misconceptions?

2 A. The type of experiment I just described, no,
3 I haven't done any like that.

4 MR. MUISE: May I approach, Your Honor?

5 THE COURT: You may approach.

6 BY MR. MUISE:

7 Q. Sir, I'm handing you what is your deposition
8 that you gave in this case on June 2nd, 2005, and I'd
9 ask you to turn to Page 104, please.

10 A. Okay.

11 Q. Could you read the question beginning at
12 Line 11 all the way through your answer at Line 14?

13 A. (Reading:) Have you done any studies as far
14 as how students reach misconceptions? No. Mr. White:
15 Why don't we --

16 Q. That's fine, sir. That was through Line 14.
17 Correct?

18 A. Yes.

19 Q. Was that a truthful answer you gave in your
20 deposition?

21 A. Yes.

22 Q. Thank you, sir. Now, sir, in preparation
23 for the opinions that you intend to offer or that you
24 offered in this particular case, you have not been to
25 the Dover science class. Correct?

1 A. Correct.

2 Q. And you've never attended or witnessed a
3 ninth-grade biology class at Dover High School?

4 A. Correct.

5 Q. You have not spoken to any of the teachers
6 at Dover High School regarding the policy at issue?

7 A. I have not.

8 Q. You have not spoken to any of the parents at
9 Dover High School regarding the policy at issue?

10 A. I have not.

11 Q. You have not spoken to any of the students
12 at Dover High School regarding the policy at issue?

13 A. I have not.

14 Q. You have not been in the ninth-grade biology
15 class when the four-paragraph statement which we saw
16 here on the screens was read to the students. Is that
17 correct?

18 A. That's correct.

19 Q. You have not witnessed any students'
20 reaction to hearing this four-paragraph statement that
21 you testified to. Is that correct?

22 A. That's correct.

23 Q. So, sir, you have no knowledge concerning
24 whether this four-paragraph statement, which takes
25 approximately one minute to read, is read with the

1 tone, the inflection, the facial expression, and the
2 gestures that you employed today in court to read the
3 statement. Is that correct?

4 A. That's correct.

5 Q. And, sir, you haven't interviewed any
6 students who have heard this one-minute statement to
7 find out what their views are with regard to that
8 statement. Is that correct?

9 A. Correct.

10 Q. And you haven't interviewed any of the
11 school board members --

12 A. No.

13 Q. -- regarding the intention of this
14 statement. Correct?

15 A. Correct.

16 Q. And you've never spoken with any of the
17 administrators at Dover High School regarding this
18 statement. Correct?

19 A. Correct.

20 Q. And, sir, you don't have any studies to show
21 that the reading of this statement to students has
22 been detrimental for their education. Correct?

23 A. I don't have studies to show that any
24 pseudoscience being taught to students in this manner
25 is detrimental, correct.

1 Q. And so the answer to that specific question
2 with regard to the statement is a yes?

3 A. Yes.

4 Q. And you have also not spoken to any students
5 or parents who have indicated that their education at
6 Dover High School has been harmed by hearing this
7 statement. Is that correct?

8 A. Correct.

9 Q. So you've never been to the Dover High
10 School library. Correct?

11 A. Correct.

12 Q. You haven't witnessed any students reading
13 the *Pandas* book. Is that correct?

14 A. Correct.

15 Q. You haven't interviewed any students
16 regarding their reaction to the *Pandas* book. Is that
17 correct?

18 A. Correct.

19 Q. And you don't even know, actually, if any
20 students have even looked at the *Pandas* book. Is that
21 correct?

22 A. Correct.

23 Q. Now, I believe you indicated already to my
24 initial questions that you don't consider yourself an
25 expert on state academic standards. Is that correct?

1 A. Correct.

2 Q. And with regard to this case, you were asked
3 in your deposition whether you know what a school
4 board's obligation is regarding standards in
5 Pennsylvania, and you answered no. Is that accurate?

6 A. Accurate.

7 Q. And when you were asked, do you know in
8 Pennsylvania how the school board would comply with
9 the standards set forth in the State of Pennsylvania,
10 you answered no. Is that correct?

11 A. Correct.

12 Q. And preparing your expert report in this
13 case and prior to your deposition, you didn't compare
14 the Dover curriculum with the state academic
15 standards. Isn't that correct?

16 A. Correct.

17 Q. I believe you testified at your deposition
18 that you just did a quick examination of the state
19 standards concerning evolution and saw that there were
20 some similarities between the Dover curriculum and the
21 state standards. Is that accurate?

22 A. Accurate.

23 Q. So, sir, do you know if Darwin's theory of
24 evolution will be taught in the ninth-grade biology
25 class consistent with the Pennsylvania academic

1 standards?

2 A. I have no way of knowing that.

3 Q. Sir, would it be fair to say that your
4 expertise does not involve evaluating policy in the
5 context of state academic standards?

6 A. Correct.

7 Q. Now, you testified regarding the state
8 academic standards this morning, in particular, one of
9 the sections your attorney pointed out to you where
10 the standard indicates, quote, Critically evaluate the
11 status of existing theories, end quote, and then they
12 included a parenthetical with five theories, one of
13 them being the theory of evolution. Do you recall
14 that?

15 A. Yes.

16 Q. Do you consider that to be a valid
17 educational standard?

18 A. Yes, as long as one understands what it
19 means in education. And what it means in education,
20 the word "evaluate" is used 54 times in the
21 Pennsylvania state standards just in the science
22 section.

23 And "evaluate" means two things for
24 educators. One is to have the student hone their
25 tools to be able to critically evaluate something. It

1 doesn't mean trash something, it means critically
2 evaluate. Two plus two equals four. We want them to
3 critically evaluate and understand what are the
4 mathematical reasons to come to four. So it's not
5 just trashing. It's not saying, two plus two equals
6 five and then the teacher lets that end up to be that
7 way.

8 The other aspect of it that educators
9 appreciate when they see the word "evaluate," again,
10 54 times used in the Pennsylvania state standards just
11 within the science section, is that "evaluate" also
12 means so that the teacher can see how the student is
13 thinking when they're critically evaluating something.
14 So if the student then comes back and says, you know,
15 there's good reason that two plus two equals five, the
16 teacher then can dig in and try to diagnose the
17 misconceptions that are either direct or underpin why
18 the student thinks two plus two equals five.

19 Q. That's a valid educational objective?

20 A. Yes.

21 Q. Sir, is it your understanding that Dover is
22 a standards-driven district?

23 A. That's my understanding.

24 Q. Do you know what a standards-driven district
25 means?

1 A. I don't know what they mean by the term, no,
2 but I can guess.

3 Q. We don't need you to guess here, sir. Let
4 me ask you if you understand this, that as a
5 standards-driven district, the class instruction
6 focuses on preparing students to achieve proficiency
7 in the standard-based assessments. Do you have that
8 understanding?

9 A. Yes.

10 Q. Did you get that understanding from reading
11 the statement?

12 A. I don't recall.

13 Q. Is it your understanding that because Dover
14 is a standards-driven district, students will not be
15 tested on intelligent design?

16 A. I don't know if it's because of that, but my
17 understanding is they will not be, something I've read
18 in the -- concerning the overall policy. I remember
19 seeing that.

20 Q. Again, it goes back to, I guess, your lack
21 of understanding fully of what it means to be a
22 standards-driven district?

23 A. No, I think I just read it somewhere in the
24 policy where it said that they'll not be tested on
25 intelligent design.

1 Q. But you don't know if that has anything to
2 do with the fact that they're a standards-driven
3 district?

4 A. I imagine something could be a
5 standards-driven district and not necessarily be
6 examined on every subject that's within the standards.
7 It would be an awful long exam.

8 Q. Is it your understanding that the biology
9 book that was purchased and that is being used in the
10 ninth-grade biology class is the Miller and Levine
11 2004 version of *Biology*?

12 A. Yes.

13 Q. Have you had a chance at all to review that
14 book?

15 A. No.

16 Q. Dr. Kenneth Miller, who is also an expert in
17 this case, who coauthored that book, seemed to be
18 rather fond of it. Do you have any reason to question
19 his opinions about his book and what's covered in it?

20 A. No special reason, no.

21 Q. Do you have any reason to doubt that this
22 book provides thorough coverage of Darwin's theory of
23 evolution?

24 A. No.

25 Q. Do you have any reason to doubt that this

1 biology book presents Darwin's theory of evolution in
2 a manner that's consistent with this theory's status
3 or standing in the scientific community?

4 A. No.

5 Q. So you do understand that *Pandas* is not a
6 required textbook for the Dover biology class.

7 Correct?

8 A. Correct.

9 Q. And I believe at the time you formed your
10 opinions in this case and at your deposition, you
11 didn't know whether this book was going to be kept in
12 the science classroom or in the library. Is that --

13 A. Correct.

14 Q. Sorry?

15 A. Correct.

16 Q. And have you come to learn that this book is
17 being placed in the library?

18 A. I believe I heard that somewhere, but I
19 don't recall where.

20 Q. Do you recall in your deposition you stated
21 that if you lived in the area and sent a child to the
22 Dover school, you would have no problem with *Pandas*
23 being in the school library?

24 A. I have no problem with virtually any book
25 being in a school library or a public library where

1 the local people and/or school or school board, et
2 cetera, determines that these books will be in there.
3 No, I have no problem with that.

4 Q. That would include the *Pandas* book.
5 Correct?

6 A. Correct.

7 Q. Sir, that statement that you read here today
8 in court, are you aware that that statement was
9 modified in June?

10 A. Which statement is that?

11 Q. That four-paragraph statement that you read
12 that is being read to the students.

13 A. Yes, I heard it was changed, but I don't
14 recall to what.

15 Q. Do you know if it was changed to indicate
16 that *Pandas* was, in fact, going to be put in the
17 library?

18 A. No, I don't recall that.

19 Q. Have you come to any understanding that the
20 policy was changed to indicate that books in addition
21 to *Pandas* are going to be placed in the library?

22 A. Any books?

23 Q. Books regarding intelligent design.

24 A. I'm not following your question. Sorry.

25 Q. Well, my question is regarding the revised

1 statement. It was revised in June, as the evidence
2 will demonstrate here. And I'm asking whether you,
3 first of all, understood that it was revised to
4 indicate that *Pandas* was going to actually be put in
5 the school library, and I believe you testified you
6 had heard something about that. Is that correct?

7 A. Heard, read.

8 MR. WALCZAK: I'm going to object. The
9 witness already stated that he does not have a
10 recollection of how the June statement was changed,
11 and perhaps if Mr. Muise is going to continue to ask
12 Dr. Alters questions, he could give him a copy of that
13 statement.

14 THE COURT: Well, he has him on cross. He
15 doesn't have to give him a copy of the statement. But
16 he seems to be rather vague about that. So you can --

17 MR. MUISE: I just want to see the
18 understanding or knowledge that he has. Obviously
19 it's going to go to how he formed his opinions in this
20 case.

21 THE COURT: Well, you may get some "I don't
22 know" answers, but you don't have to show him the
23 statement. So I'll overrule the objection to that
24 extent. You can continue with your cross.

25 BY MR. MUISE:

1 Q. Do you have any understanding, sir, that the
2 statement was modified to indicate that there were
3 going to be books in addition to *Pandas* on intelligent
4 design that will be placed in the library?

5 A. No.

6 Q. So it would be fair to say that you don't
7 know whether or not any additional books are being
8 placed in the library that might be critical of
9 intelligent design. Is that accurate?

10 A. That's accurate.

11 Q. Sir, critical thinking is a legitimate
12 pedagogical goal for science education, is it not?

13 A. It is.

14 Q. And education in the science classrooms in a
15 public high school should encourage critical thinking?

16 A. Yes.

17 Q. It is good science pedagogy to encourage
18 critical thinking?

19 A. Yes.

20 Q. And critical thinking includes being able to
21 take a proposition, concept, and idea and be able to
22 look at it from different points of view?

23 A. Scientific concept, proposition, if we're
24 talking about science education. I'm not an expert in
25 music education or art, but within the realm of

1 science education, as long as you preference it with
2 science.

3 Q. So critical thinking -- let me reask the
4 question so we can have the record clear. Critical
5 thinking includes being able to take a scientific
6 proposition, concept, or idea and be able to look at
7 it from different points of view?

8 A. Different scientific points of view, yes.

9 Q. A part of critical thinking is to question
10 fundamental theories in science?

11 A. Not trash them. It depends on what you mean
12 by "question."

13 Q. Sir, if you'd open your deposition to Page
14 175, please.

15 A. Okay.

16 Q. And if you'd read from Line 3 with the
17 question down through and including Line 12, which is
18 your answer to two questions.

19 A. (Reading:) Is a part of critical thinking
20 to the question fundamental -- is a part of critical
21 thinking to question fundamental theories? Answer: I
22 think critical thinking can be applied to all areas of
23 science. How far do you want me to go?

24 Q. Read the next question and answer, please.

25 A. Does that include questioning fundamental

1 theories in science? Yes.

2 Q. Is that a truthful answer?

3 A. Yes.

4 Q. Would you consider the theory of evolution
5 to be a fundamental theory in science?

6 A. Evolutionary theory is more than just the
7 theory of evolution. You have the occurrence of
8 evolution and the mechanisms of evolution. But yes.

9 Q. Sir, would you agree that critical thinking
10 involves comparing equivalent ideas, scientific ideas,
11 and comparing them with the evidence in some --
12 comparing them sometimes -- comparing sometimes
13 misconceptions with the evidence?

14 A. Yes.

15 Q. You would agree that all things in science
16 should be looked at critically?

17 A. It might be a waste of time, but, yes, in
18 principle, if one had that amount of time.

19 Q. Would you agree that the purpose of a high
20 school science course is not to train scientists but
21 to contribute to the liberal education of students?

22 A. Yes.

23 Q. Now, we talked about misconceptions. You
24 testified about it, and I had asked you about that
25 being sort of a central focus of your testimony.

1 Correct?

2 A. Yes.

3 Q. I want to explore a little bit more this
4 idea of misconceptions. I believe on direct you
5 indicated that you reviewed one of the 1990 versions
6 of the Miller and Levine *Biology* textbook?

7 A. Late 1990s. I don't recall the year.

8 Q. Do you recall if it was the elephant book?

9 A. I don't recall.

10 Q. Well, sir, there's evidence in this case
11 that the 1995 version of the *Biology* text coauthored
12 by Dr. Miller stated the following: Quote, It is
13 important to keep this concept in mind, evolution is
14 random and undirected, end quote. Sir, is evolution
15 random and undirected?

16 A. It would be my position that would be
17 outside the realm of science. I would consider that
18 philosophy.

19 Q. So if a student believed that this was a
20 scientific claim, that would be a misconception?

21 A. I believe so.

22 Q. Would it be a misconception for a student in
23 the ninth-grade biology class to believe that Darwin's
24 theory of evolution is an absolute truth?

25 A. We would never use the word "absolute

1 truth." I don't agree with your statement. We don't
2 use the word "truth" in science. Science is
3 tentative. It's always open in principle to new
4 corrections, new data coming in. I can't answer a
5 question that has the word "truth" in it applied to
6 science.

7 MR. MUISE: May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 BY MR. MUISE:

11 Q. Sir, I've handed you a copy that's been
12 marked as Defendants' Exhibit 214, which is the
13 Prentice Hall *Biology* book by Miller and Levine. I
14 direct your attention to Page 15, please.

15 A. Yes.

16 Q. Can you see the beginning of the second full
17 paragraph? If you could read for me the first
18 sentence where it begins, A useful.

19 A. A useful theory may become the dominant view
20 among the majority of scientists, but no theory is
21 considered absolute truth.

22 Q. Do you agree with that statement?

23 A. I wouldn't have used the word "absolute
24 truth," but in principle, I agree with it, yes.

25 Q. So in principle that statement --

1 A. The problem is that truth to most children
2 who read this will think that means an absolute. It
3 never changes, it will always be the truth forever.
4 Science, in principle, is always open to new data
5 coming in, and it changes. So I think the author here
6 is trying to communicate to 15-year-olds. This isn't
7 like the truth that you're used to where things stay
8 the same all the time. Science is open to the new
9 data coming in.

10 Q. Does that statement create a misconception?

11 A. I think possibly somewhere, maybe in the
12 rest of the text or maybe with the biology teacher,
13 they might talk about how "truth" is generally not
14 used by scientists. The people who wrote this book
15 are communicating and trying to teach children,
16 15-year-old children.

17 We probably wouldn't find the "T" word in
18 their scientific writing and journals, but we find the
19 "T" word here in how they communicate using the
20 language that 15-year-olds understand. That's what I
21 think the authors are trying to do. So it may create.

22 As you said before, we would have to do some
23 experiments on this to see if it creates a -- I think
24 it's reasonable to believe that it would not create a
25 misconception among students. And I would hope that

1 if a student started to use the word "truth" in the
2 biology classroom, that is when the teacher could say,
3 oh, but that's a misconception, we don't use that, and
4 then explain why.

5 Q. Well, placing this in the context of
6 communicating to your 15-year-old ninth-grade biology
7 student, in principle, would it be a misconception for
8 a student in a ninth-grade biology class to believe
9 that Darwin's theory of evolution was the absolute
10 truth?

11 A. Well, there are so many things wrong with
12 that question. You have "believe," which you're going
13 to have to define for me. And then we go back to the
14 "absolute truth" again. "Believe" is defined various
15 different ways. It's a level of confidence in most
16 ways, is the word "believe." What level of confidence
17 do you have in this? What level of confidence do you
18 have concerning its absolute truth? That is one way.
19 So if you reask your question, I'll try to do my best
20 to answer it.

21 Q. What if we change the word from "believe" to
22 "understands"?

23 A. Okay. Could you restate the question then?

24 Q. Would it be a misconception for a student in
25 a ninth-grade biology class to understand that

1 Darwin's theory of evolution was a fact -- excuse me,
2 Darwin's theory of evolution is an absolute truth?

3 A. "Absolute truth," yes, used in the way a
4 15-year-old would understand it, that would be a
5 misconception, yes.

6 Q. In keeping with our 15-year-old
7 understanding, because we are talking about a
8 ninth-grade biology class, would it be a misconception
9 for a student in a ninth-grade biology class to
10 understand that Darwin's theory of evolution was a
11 fact?

12 A. No, it wouldn't be a misconception at all.
13 It would be accurate.

14 Q. So you would disagree then with Dr. Miller's
15 opinion on that issue?

16 A. I doubt we disagree, but you're stating that
17 we do, so I imagine you'll point that out to me.

18 Q. Well, if a student understood that science
19 has answered all questions regarding the theory of
20 evolution, would that be a misconception?

21 A. Yes.

22 Q. If a student believed that science has
23 solved the origin of life question, would that be a
24 misconception?

25 A. Yes.

1 Q. Sir, you would agree that all scientific
2 theories are tentative?

3 A. Yes.

4 Q. Including Darwin's theory of evolution?

5 A. Yes.

6 Q. And to say that a theory is tentative means
7 that as new information comes in, scientists should
8 accept that new information and, if necessary, modify
9 existing theories?

10 A. Yes.

11 Q. And that, again, would include Darwin's
12 theory of evolution?

13 A. Yes.

14 Q. If a student understood that Darwin's theory
15 of evolution was not tentative, would that be a
16 misconception?

17 A. Yes.

18 Q. Would it be good science pedagogy to tell
19 students that Darwin's theory of evolution continues
20 to change as new data are gathered and new ways of
21 thinking arise?

22 A. If you're singling out evolution only and
23 not saying that all of science does that, then that
24 might be problematic, because what you might be
25 engendering in students at the time is a misconception

1 that somehow evolution is a special science, that it's
2 not like the rest of science. So your question can be
3 answered in two ways, yes and no, or I like better,
4 maybe.

5 Q. Sir, if you could turn to Page 386 in
6 Defendants' Exhibit 214. And there's a subheading
7 entitled, Strengths and Weaknesses of Evolutionary
8 Theory.

9 A. Yes.

10 Q. If you look at the second full paragraph,
11 could you please read the first sentence?

12 A. (Reading:) Like any scientific theory,
13 evolutionary theory continues to change as new data
14 are gathered and new ways of thinking arise.

15 Q. And, again, that's a statement from out of
16 the Miller and Levine *Biology* textbook?

17 A. Yes, within the context of the evolution
18 chapter in the book, yes.

19 Q. Does that statement create a misconception
20 of students?

21 A. Within the context of this chapter, within
22 the context of reading this, I don't think so.

23 Q. Do you know if there are any other theories
24 that are addressed in this book that have a subheading
25 entitled, Strengths and Weaknesses?

1 A. I haven't read the book.

2 Q. So the answer is no, you don't know?

3 A. I don't know. I haven't read the book.

4 Q. Would it be good science pedagogy to tell
5 students that the fossil record is incomplete?

6 A. That would be fine in the context of a
7 discussion regarding the fossil record and evolution,
8 yes.

9 Q. Would you agree that Darwin's theory of
10 evolution is incomplete?

11 A. Darwin's theory of evolution is natural
12 selection. Some parts of it, yeah, I'll go ahead and
13 say yes.

14 Q. So it would be a misconception for a
15 ninth-grade biology student to believe otherwise?

16 A. Probably. I would have to think about that
17 one. That's a more complex question.

18 Q. But right now your answer is "probably"?

19 A. Yes.

20 Q. Sir, I'm going to ask you if you agree with
21 this National Science Education Standard. I believe
22 it's listed as 1996c. Quote, In the areas where data
23 or understanding are incomplete, such as the details
24 of human evolution or questions surrounding global
25 warming, new data may well lead to changes in current

1 ideas or resolve current conflicts, end quote. Are
2 you familiar with that standard?

3 A. I'm not familiar with that quote, but I'm
4 familiar with the National Science Education
5 Standards, yes.

6 Q. Well, would it be a misconception for a
7 ninth-grade biology student to understand that
8 scientists completely understand the details of human
9 evolution?

10 A. I don't know if scientists completely
11 understand any area of science.

12 Q. And that would include the details of human
13 evolution?

14 A. Of course.

15 Q. Now, in your deposition you indicated that
16 you do not like the word "gap" because it sounds like
17 something is missing that naturally should be there?

18 A. That was just a personal observation. It's
19 not a word that I've thought about a lot.

20 Q. Do you recall testifying as such in your
21 deposition?

22 A. I don't doubt at all that I did. I don't
23 recall it, but I don't doubt it.

24 Q. Well, would it be good science pedagogy to
25 tell students that the leap from nonlife to life is

1 the greatest gap in scientific hypotheses of Earth's
2 early history?

3 A. Could you repeat that?

4 Q. Would it be good science pedagogy to tell
5 students that the leap from nonlife to life is the
6 greatest gap in scientific hypotheses of Earth's early
7 history?

8 A. I don't know if it is. I can't answer that
9 question.

10 Q. Do you know if that is an accurate
11 statement, the leap from nonlife to life is the
12 greatest gap in scientific hypotheses of Earth's early
13 history?

14 A. I don't know. I suspect it is, but I don't
15 know.

16 Q. You suspect that it's true?

17 A. I suspect it's true.

18 Q. If you suspect that it's true, would you
19 suspect that it wouldn't create a misconception?

20 A. My level of confidence is very low on my
21 suspicion concerning that, so I wouldn't bet much
22 money on it.

23 Q. Is there a reason why your confidence is
24 low?

25 A. I would have to think about it for a while,

1 maybe even consult some scientists.

2 Q. Well, maybe if you look at Page 425 in
3 Defendants' Exhibit 214.

4 A. 425?

5 Q. Yes.

6 A. Yes.

7 Q. If you could read that first sentence under
8 The Puzzle of Life's Origin on Page 425.

9 A. (Reading:) A stew of organic molecules is a
10 long way from a living cell, and the leap from nonlife
11 to life is the greatest gap in scientific hypotheses
12 of Earth's early history.

13 Q. Are you more firm in your beliefs at this
14 point?

15 A. My confidence level has increased, yes. I
16 understand that Ken Miller is an excellent scientist.

17 Q. So, again, my question would be, is it good
18 science pedagogy to tell students that the leap from
19 nonlife to life is the greatest gap in the scientific
20 hypotheses of Earth's early history?

21 A. My confidence level has gone up from what it
22 was previous to reading this, but it's still not up --
23 I would like to have some more evidence.

24 Q. Is it proper science pedagogy to tell
25 students that Darwin's theory is a well-tested

1 explanation that unifies a broad range of
2 observations?

3 A. Yes.

4 Q. Sir, you would acknowledge that there are
5 weaknesses in the theory of evolution. Correct?

6 A. Could you repeat the question, please?

7 Q. Would you acknowledge that there are
8 weaknesses in the theory of evolution?

9 A. There are weaknesses in the mechanisms, the
10 understanding of the mechanisms for evolution. I do
11 not know of any evidence against the occurrence of
12 evolution.

13 Q. You've used that term "occurrence of
14 evolution" quite a bit in your direct testimony.
15 Correct?

16 A. Yes.

17 Q. Now, when you're referring to "occurrence of
18 evolution," is that you're referring to the notion of
19 change over time, that life has changed over time?

20 A. Roughly, yes.

21 Q. And you distinguish that from the mechanisms
22 of evolution such as natural selection?

23 A. Correct.

24 Q. You would agree that we do not have
25 overwhelming consensus yet on the mechanisms of

1 evolution?

2 A. Correct.

3 Q. And so in your direct testimony when you
4 were claiming that you weren't aware of any scientific
5 organization or science textbook that indicated any
6 controversy regarding the occurrence of evolution, you
7 were referring to evolution in the sense of change
8 over time. Correct?

9 A. That evolution occurred, yes.

10 Q. As opposed to the mechanisms of evolution
11 such as natural selection. Correct?

12 A. Correct.

13 Q. Now, in your deposition, you claimed that
14 the -- when you were asked questions about the
15 strengths of the theory of evolution, you referred to
16 the structural similarity in embryology as being one
17 of the strengths of evolution. Is that correct?

18 A. Yes.

19 Q. When you were referring to the structural
20 similarity in embryology, were you referring to the
21 famous or infamous Haeckel embryos?

22 A. No, just in general.

23 Q. Are you familiar with the Haeckel embryos?

24 A. I've heard some things about it, yes.

25 Q. And those drawings have appeared in biology

1 texts for many years?

2 A. That's what I understand.

3 Q. And also these drawings were later found out
4 to be an actual fraud?

5 A. That's what I understand, yes.

6 Q. Should students be made aware of the fact
7 that these drawings were a fraud?

8 A. That would be a judgment call on the
9 individual instructors or school district or whatever.
10 It depends on if they have been brought up, it depends
11 on if students brought them up, if they're used in
12 textbooks. There are too many factors to consider
13 there. I can't make a blanket statement on that.

14 Q. Well, if students believe that those embryos
15 were true, that would be a misconception, would it
16 not?

17 A. From my understanding of this, yes. I'm not
18 an expert in science, and I'm not an expert on the
19 Haeckel embryo history.

20 Q. Sir, I want to explore a little bit your
21 understanding of intelligent design as it relates to
22 the opinions that you've offered in this case. Does
23 intelligent design, from your perspective, require
24 adherence to the claim that the earth is no older than
25 6,000 to 10,000 years?

1 A. Not necessarily.

2 Q. Does intelligent design require adherence to
3 the six-day creation event, that is, a literal reading
4 of the account in the Book of Genesis?

5 A. Not my understanding, no.

6 Q. Does intelligent design require adherence to
7 the flood geology point of view advanced by
8 creationists?

9 A. No.

10 Q. Is it your understanding that intelligent
11 design requires the action of a supernatural creator?

12 A. Yes.

13 Q. Is it your understanding that intelligent
14 design rules out all natural explanations for design?

15 A. In my view, yes.

16 Q. Sir, intelligent design does not depend on
17 any religious faith. Correct?

18 A. Correct.

19 Q. Intelligent design is not dependent on the
20 Bible to reach its conclusions. Correct?

21 A. Correct.

22 Q. Intelligent design is not dependent on
23 sacred Scripture to reach its conclusions. Correct?

24 A. Correct.

25 Q. Intelligent design does not say who the

1 designer was. Correct?

2 A. Correct.

3 Q. Is it your understanding that intelligent
4 design disputes the occurrence of evolution as we just
5 explored the definition of that term?

6 A. It certainly does in *Pandas and People*, Page
7 99 to 100.

8 Q. So it's your understanding of intelligent
9 design that it disputes the claim that life has
10 changed over time?

11 A. You've taken the definition from the
12 occurrence of evolution to change over time. I'm
13 going to direct it right back to the occurrence of
14 evolution. The Dover policy states that there's an
15 alternative to the occurrence of evolution, Darwin's
16 theory of evolution, and it's called intelligent
17 design. So intelligent design is considered to be
18 something alternative to the occurrence of evolution.

19 Q. Well, let me ask you again then, how do you
20 define "occurrence of evolution"?

21 A. That evolution has occurred.

22 Q. And what do you mean by "evolution"?

23 A. Descent with modification.

24 Q. Is that not the mechanism of evolution?

25 A. No, that the earth is very old and that

1 ancestry exists among all organisms on the planet,
2 descent with modification.

3 Q. You distinguish that from natural selection,
4 though. Correct?

5 A. Natural selection is one of the possible
6 mechanisms for evolution, yes.

7 Q. Was not natural selection Darwin's principal
8 contribution to the theory of evolution?

9 A. Yes.

10 Q. So the fact that life has changed over time,
11 meaning life as we see it today was not the same as
12 life was in earlier stages of the earth's history,
13 that understanding was known before actually Darwin
14 offered the mechanism of natural selection. Is that
15 true?

16 A. Correct.

17 Q. And so, again, when you're talking about the
18 occurrence of evolution, you're not talking about
19 natural selection, you're talking about this notion
20 that life is not the same today as it was previously?

21 A. Correct.

22 Q. And it's your understanding that intelligent
23 design refutes that aspect of evolution, the
24 occurrence of evolution as you're claiming?

25 A. It conflicts with the -- yes, the scientific

1 explanation of the change in life on the planet, as
2 opposed to intelligent design that states that some
3 supernatural cause came in and changed life on the
4 planet.

5 Q. And, again, sir, I'm asking, though, is it
6 your understanding that intelligent design refutes
7 that life has changed over time on the planet?

8 A. Evolution -- the occurrence of evolution and
9 how it preceded is -- could you repeat your question?

10 Q. We keep dancing around the occurrence of
11 evolution, and I'm trying to just ask you if it's your
12 opinion or your opinions are based on the
13 understanding that intelligent design refutes the
14 notion that life has changed over time, meaning life
15 as it is today is different than --

16 A. Well, it's a tough question to answer
17 because intelligent design posits that some life was
18 inserted into along the history of life on the planet.
19 Evolution has the history of life along the planet
20 scientifically explained. Intelligent design inserts,
21 by supernatural causation, life along the way. So
22 that's why it's tough to answer that question, for me,
23 at least.

24 Q. Well, you used the term "history of life."
25 Is it your understanding that intelligent design

1 refutes the notion that there's a history of life on
2 this planet?

3 A. Well, when I read Page 99-100, for example,
4 in *Pandas*, yes, it has a fish appearing with fins
5 fully and birds with feathers and so forth, abrupt
6 appearance. It's quite different than the history of
7 evolution.

8 Q. Sir, is intelligent design falsifiable?

9 A. I have no idea. I'm not a philosopher of
10 science. It's outside of my area of expertise.

11 Q. Do you know if any biology teachers in
12 secular colleges are providing students with
13 supplemental materials that discuss intelligent
14 design?

15 A. I know of none.

16 Q. Do you know if any biology teachers in
17 secular colleges are discussing intelligent design in
18 their classes?

19 A. I've heard of some that have discussed it to
20 point out that it's not science, to use it as a foil
21 for the scientific method, scientific processes.

22 Q. Do you consider Brown University a
23 prestigious university?

24 A. Yes.

25 Q. Do you remember Cornell University a

1 prestigious university?

2 A. Yes.

3 Q. Sir, you testified today, and I believe it's
4 consistent with your deposition, that you believe one
5 of the fundamental reasons that *Pandas* is not a
6 science book is because of the ground rule, as you
7 described it, of methodological naturalism?

8 A. Yes.

9 Q. Now, you described it as a ground rule. Is
10 this a rule written somewhere in a science rule book?

11 A. No. But when it's broken, you hear a lot
12 about it.

13 Q. Do you know if philosophers of science
14 actually debate whether or not methodological
15 naturalism is an appropriate way or appropriate gloss
16 to apply on science?

17 A. Again, to repeat, I'm not a philosopher of
18 science, and I understand philosophers argue about
19 everything.

20 Q. Now, you said you reviewed the book *Pandas*
21 *and People*, and, in fact, you put up a few select
22 quotes up on the display here in court. Correct?

23 A. No, no, that's not what I said. I probably
24 received the book about ten years ago. I looked at it
25 then. I haven't looked at it since until this trial

1 came up. I pulled it off the shelf. I had a page
2 marked, 99 to 100, with a Post-It note, I assume ten
3 years ago. I read the note to the teachers recently
4 as preparation for this and may have looked at the
5 glossary.

6 Q. That's all you looked at in preparation for
7 your opinions today?

8 A. Yes.

9 Q. So you didn't look at the section that
10 discusses the blood clotting system, for example?

11 A. No, I didn't.

12 Q. So you have no way of knowing whether that's
13 an accurate scientific account?

14 A. No.

15 Q. And you also didn't look at the section
16 dealing with the molecular clock problem?

17 A. I didn't look at any other section in the
18 book other than Page 99 and 100 concerning the abrupt
19 appearance and the supernatural causation right in the
20 middle of it. That was enough of the book for me.

21 Q. So, again, you wouldn't have any reason to
22 refute the scientific validity of the molecular clock
23 claim made in the *Pandas* book. Correct?

24 A. I haven't read it, so, yes, I can't comment
25 on that.

1 Q. Now, you referenced several statements that
2 were made by various organizations, one by the
3 National Academy of Sciences, another by the AAAS, a
4 board resolution, a resolution by the NSTA, a
5 resolution by the NABT, and a resolution by the AAUP,
6 which were addressing the teaching of evolution, as
7 well as intelligent design. Do you recall those
8 various resolutions that you went through?

9 A. I don't have them memorized, but I recall
10 going through those, yes.

11 Q. Now, is it accurate to say that those
12 resolutions are policy statements?

13 A. I don't know.

14 Q. Well, do you know if any of those statements
15 provide any experimental evidence to refute
16 intelligent design?

17 A. I don't know.

18 Q. Have you read the entire statements or just
19 those select portions that you displayed and testified
20 to today?

21 A. Some of the statements I read completely.
22 Possibly other ones just sections. I don't recall.

23 Q. So you don't recall the ones you read
24 whether they cite any experimental evidence?

25 A. I don't recall any.

1 Q. Now, a focus of your research from your
2 testimony, I gather, is on this perceived conflict
3 between religion and evolution. Is that correct?

4 A. Yes, the problems that students perceive
5 that they have in learning evolution concerning
6 primarily their religious faith.

7 Q. And I take it from your testimony that there
8 isn't a conflict between evolution and religious
9 beliefs. Is that correct?

10 A. No, what I said, the majority of religions
11 that I'm familiar with have accommodations for
12 evolution or don't seem to have much problems. Some
13 sections of some religions certainly do have a direct
14 conflict.

15 Q. Would it be a misconception for a student to
16 enter a science class with the understanding that
17 science has disproven the existence of God?

18 A. That would be a misconception about nature
19 of science.

20 Q. And for scientists to say otherwise would
21 engender a misconception?

22 A. I don't know if it would necessarily
23 engender a misconception, but it is a misconception.

24 Q. Would it create a misconception for students
25 to conflate the strength of scientific evidence for

1 the occurrence of evolution with the scientific
2 evidence for the mechanism of evolution, specifically
3 natural selection?

4 A. They're two different things. One is the
5 occurrence and one is the mechanisms.

6 Q. And would it be a misconception for a
7 student to conflate the evidence between the two?

8 A. I don't think there's an exact wall between
9 the two of them. I don't --

10 Q. Let me ask you this then, sir. Is there a
11 difference in terms of the consensus within the
12 scientific community regarding the evidentiary support
13 for the occurrence of evolution compared with the
14 evidentiary support for the mechanism of evolution,
15 natural selection?

16 A. Yes.

17 Q. Would it be a misconception for the students
18 to conflate those two?

19 A. Yes. There are technical aspects involved
20 in that that might be able to be parsed out with
21 15-year-olds. Part of it is extraordinarily
22 complicated and far above my level.

23 Q. So, for example, if a student believed that
24 there was overwhelming scientific consensus for
25 natural selection, that would be a misconception?

1 A. Yes. That's natural selection being the
2 only mechanism for evolution. I assume that's what
3 you meant by the question.

4 Q. That wasn't the point of my question. The
5 point of my question was, you testified that the
6 evidence, the scientific consensus for the occurrence
7 of evolution -- I believe one of the terms you used
8 was "overwhelming" or something along those lines.

9 A. Sounds good.

10 Q. Would you also agree that the scientific
11 consensus for the evidence for natural selection is
12 not overwhelming?

13 A. The question is poorly put. The debates, as
14 I understand them in the scientific community, are
15 over what's the play of natural selection versus some
16 of the other mechanisms, founder effect, genetic
17 drift, you know, all these, what role do they play and
18 what percentages and so forth and complex issues
19 concerning them. So it's not just confidence level in
20 natural selection, it's confidence level in what role
21 does natural selection play in the mechanisms of
22 evolution.

23 Is it -- this is not how the scientists
24 would put it, but is it the major, is it more minor,
25 is it more in the middle involved, that sort of a

1 question, not just do they have a high confidence
2 level in natural selection.

3 Q. But the debate over the mechanism of
4 evolution is not the same as scientists debating the
5 occurrence of evolution?

6 A. Scientists don't debate the occurrence of
7 evolution. That was put to bed long ago. They're
8 debating the mechanisms and what interplay the various
9 mechanisms have.

10 Q. So if a student believes that the consensus
11 for the mechanism of evolution was the same as the
12 consensus for the occurrence of evolution, that would
13 be a misconception?

14 A. Yes.

15 Q. Sir, you're a member of the National Center
16 for Science Education?

17 A. Yes.

18 Q. I believe you're a member of the board?

19 A. Yes. Just recently I was appointed, I
20 believe in February.

21 Q. I want to ask you a few more questions about
22 methodological naturalism. Is it accurate to say that
23 methodological naturalism is a convention that's
24 imposed upon scientific inquiry?

25 A. Imposed? What do you mean by "imposed"?

1 Q. It's one that places limitations on
2 scientific inquiry.

3 A. This is how scientists do their work, as I
4 understand it. When I pick up a science journal and
5 look into it, I don't find supernatural causation in
6 the scientific articles. I don't find it in the
7 college textbooks. I don't find it in the high school
8 textbooks. The most prestigious scientific
9 organization, NAS, says no, AAAS says no, and NSTA,
10 NABT say no. So I have a very high confidence level
11 on this issue concerning that supernatural causation
12 is not part of the ground rules of science and that
13 methodological naturalism is.

14 Q. And so, for example, it would impose a
15 restriction on relying on a supernatural explanation
16 for a particular question?

17 A. I don't know about the word "restriction."
18 I don't know if anywhere it's posted, Scientists,
19 please do not use supernatural causes in your work. I
20 don't know if that exists anywhere. The word
21 "imposed" is -- I'm still having troubles
22 understanding.

23 I think scientists watch how science is
24 done. They're trained in their universities, and then
25 they go out, they probably postdoc under somebody, and

1 then they carry on their scientific work. And in
2 their journals and in their conferences it's all about
3 methodological naturalism, it's all about not
4 inserting supernatural causation into it.

5 I don't know any federal funding source that
6 funds -- or state funding sources that fund scientists
7 to do work in supernatural causes in science. So from
8 that extent, maybe there's some sort of implicit
9 imposition of that rule. But other than that, you
10 know, I don't think there's science police, if you
11 will.

12 Q. Are you aware that NASA is doing a -- is
13 involved in a program for the search for
14 extraterrestrial intelligence?

15 A. SETI?

16 Q. Yes.

17 A. Yes.

18 Q. Does that fall within the restrictions of
19 methodological naturalism, that scientific inquiry?

20 A. My understanding is it's very much
21 scientific, and the American Association -- no, the
22 American Astronomical Society came out, I think it was
23 in August, I think it was in August, with a resolution
24 condemning intelligent design and saying that
25 supernatural causation should not be a part of

1 science.

2 I don't understand the SETI project. I
3 haven't followed it whatsoever. Just what I've read
4 in the paper a little bit. But I trust that their
5 society, the American Astronomical Society,
6 understands that very well.

7 Q. Based on your understanding of SETI, is it
8 accurate to say that ruling out intelligent -- the
9 search for intelligent causes doesn't necessarily
10 violate methodological naturalism?

11 MR. WALCZAK: Your Honor, objection. I just
12 heard the witness say he really doesn't know much
13 about the SETI at all.

14 MR. MUISE: And my question, Your Honor, was
15 based on what his understanding was. He obviously has
16 some understanding of it. He testified --

17 THE COURT: Well, his answer was that he
18 knew of it, had heard of it. But I think it was quite
19 clear to me, at least, that he didn't know anything
20 more than the fact that it existed. I'll overrule the
21 objection to that question, but I'm not going to let
22 you press because I don't think he --

23 MR. MUISE: I'll move on, Your Honor.

24 THE COURT: It's pretty clear that he
25 doesn't know.

1 MR. WALCZAK: Your Honor, we're also beyond
2 the scope of his direct exam. We're beyond the scope
3 of his expert report.

4 THE COURT: That's arguably true. I'll give
5 you latitude on this question, but we ought not go too
6 far into this area. It's right on the borderline, I
7 think, and I want to give you some latitude. Do you
8 remember the question, sir? Probably not.

9 THE WITNESS: I'm sorry.

10 THE COURT: After all that dialogue.

11 THE WITNESS: I'm sorry.

12 THE COURT: Could we read it back, please.

13 (Previous question read back.)

14 THE WITNESS: My understanding of what SETI
15 is doing is looking for radio waves from possible
16 extraterrestrials and radio waves that we can
17 manufacture and understand extraordinarily well all
18 the time. I think that's quite different than
19 intelligent design where it's some supernatural cause
20 that we don't understand whatsoever.

21 BY MR. MUISE:

22 Q. Sir, are you aware of a theory that was
23 advanced called directed panspermia?

24 A. I heard of it in years past. Wasn't it
25 Francis Crick came up with that?

1 Q. Do you know if the hypothesis was that life
2 was scattered here either intentionally or
3 unintentionally by other planets?

4 MR. WALCZAK: Your Honor, I'm going to
5 object. We're outside not only the scope of his
6 expert report and his testimony, but outside his
7 expertise. Professor Alters has testified that he is
8 not a scientist, he's a science educator, and all
9 these questions are going to science.

10 MR. MUISE: Your Honor, he said the
11 fundamental reason why he believes that *Pandas* is not
12 a science book is because it violates the ground rule
13 of methodological naturalism. Methodological
14 naturalism is very much at the core of his testimony,
15 and I am exploring what his understanding of
16 methodological naturalism is and how it might or might
17 not apply in other areas which I think are very
18 relevant to the case.

19 THE COURT: Why don't you rephrase and make
20 that clear, because I don't think that was clear from
21 that question. So I'll sustain the objection to the
22 form of the question. I think that's a fair area of
23 inquiry, I agree with you, and I'll let you rephrase.

24 BY MR. MUISE:

25 Q. Sir, based on your understanding of this

1 hypothesis of directed panspermia, does it violate
2 this ground rule of methodological naturalism that
3 you've been referring to?

4 A. I don't know. I recall so little of that.
5 It's a distant memory so many decades ago, I can't
6 recall.

7 Q. Are you familiar with the big bang theory?

8 A. Yes, heard about it.

9 Q. Your understanding of the big bang theory,
10 does that violate the ground rule of methodological
11 naturalism?

12 A. I would assume not. The national academies
13 talk about the big bang, and they talk about how
14 supernatural causation should not be in science, so
15 hopefully the right hand knows what the left hand is
16 doing in all these national academies, national
17 education academies. And in reading small things here
18 and there about the physics of the big bang, I've
19 never seen supernatural causation in anything I've
20 read concerning it.

21 Q. Sir, do you know who Nobel laureate Steven
22 Weinberg is?

23 A. Yes.

24 Q. And he explained that his career in science
25 was motivated by a desire to disprove religion. And I

1 want to read you a quote that he made. Quote, I
2 personally feel that the teaching of modern science is
3 corrosive of religious belief and I'm all for that,
4 exclamation point. One of the things that, in fact,
5 has driven me in my life is the feeling that this is
6 one of the great social functions of science, to free
7 people from superstition, end quote. Do you agree
8 with that statement?

9 A. I think it's a very unfortunate statement.
10 No.

11 Q. And I take it then you would agree that he
12 is not promoting good science pedagogy?

13 A. Many scientists don't know much about
14 education. They might be great scientists in their
15 specific field, but they're not necessarily great
16 educators.

17 Q. Is it accurate to say that you should not
18 conflate a scientific theory with a nonscientific
19 idea?

20 A. Could you repeat it?

21 Q. Is it accurate to say that you shouldn't
22 conflate a scientific theory with a nonscientific
23 idea?

24 A. A scientific theory is an explanation. What
25 you said was a scientific explanation with a --

1 Q. Nonscientific idea.

2 A. With a nonscientific idea. Yes, I think
3 that would be bad.

4 Q. Sir, scientists have made nonscientific
5 claims about the theory of evolution. Correct?

6 A. Scientists make -- they're humans. They
7 make claims about a lot of things, yes.

8 Q. Do you know who Richard Dawkins was?

9 A. Is.

10 Q. Is.

11 A. He's still alive.

12 Q. Yes.

13 A. Yes, I know who he is.

14 Q. Are you aware he made this comment, quote,
15 Darwin made it possible to become an intellectually
16 fulfilled atheist, unquote?

17 A. Yes. It's an unfortunate statement.

18 Q. And that was in the *Blind Watchmaker*?

19 A. Is that where it's from? I don't know where
20 the -- I read the *Blind Watchmaker*. If that's where
21 it's from, I believe you.

22 Q. That's a nonscientific claim. Correct?

23 A. Yes.

24 Q. Are you aware of anyone -- of any scientists
25 claiming that trajectory allowed them to become a

1 intellectually fulfilled atheist?

2 A. No.

3 Q. You've testified on direct that you knew
4 fairly well the late Stephen J. Gould?

5 A. I don't know if I would say I knew him
6 fairly well, but I did know him.

7 Q. He was a colleague of yours?

8 A. Well, he was a fellow university professor.

9 Q. And I believe he endorsed one of your books?

10 A. Yes.

11 Q. Now, in a book called *Ever Since Darwin*,
12 Dr. Gould stated, quote, Before Darwin, we thought
13 that a benevolent God had created us, unquote. Are
14 you aware that he made that statement?

15 A. No, I'm not aware that he made that
16 statement, but subsequent to that book, he wrote a
17 book on science and religion and said one doesn't
18 answer the other's questions and they should live in
19 mutual respect, that science doesn't take away
20 anything from religion.

21 Q. With regard to the quote that I read to you,
22 sir, "Before Darwin, we thought that a benevolent God
23 had created us," that would be a nonscientific claim.
24 Correct?

25 A. It sounds like a history of science claim to

1 me, which, again, is outside of my expertise.

2 Q. Have you ever heard a scientist make such a
3 claim about the wave theory of light, for example?

4 A. What's the statement again?

5 Q. "Before Darwin, we thought that a benevolent
6 God had created us."

7 A. Not about a wave theory. Many other areas
8 of science, though. Only God could make a tree.

9 Q. Well, by making that statement, wouldn't
10 Dr. Gould be contributing to the misconceptions that
11 you've been trying to rid, it appears, in your career?

12 A. Occasionally scientists contribute to
13 students' misconceptions, yes.

14 Q. And this was the scientist that endorsed
15 your particular book?

16 A. Oh, I'm not saying that that statement is
17 necessarily a misconception. I'm just stating that if
18 it is a misconception, that scientists commonly make
19 misconceptions and conflate nonscience with science
20 when they're speaking or writing in books.

21 Q. Do you know who the late George Gaylord
22 Simpson was?

23 A. Yes.

24 Q. An evolutionary biologist?

25 A. Yes. Did a lot of work on tempo and mode of

1 evolution.

2 Q. He wrote a book called, *The Meaning of*
3 *Evolution*, and in this book, he said this quote: Man
4 is the result of a purposeless and materialistic
5 process that did not have him in mind. He was not
6 planned, end quote. Is that a scientific claim?

7 A. Could you read it one more time, please?

8 Q. Man is the result of a purposeless and
9 materialistic process that did not have him in mind.
10 He was not planned.

11 A. To me that's not a scientific statement.

12 Q. Did you ever hear a scientist make such a
13 claim in the context of discussing trajectory?

14 A. No.

15 Q. Is it your testimony that intelligent design
16 is being taught to the students because the statement
17 is being read to them?

18 A. During the mini lecture that they receive,
19 yes, it's being taught in the Dover curriculum, and
20 it's even -- the word "lecture" is even there.

21 Q. If the statement was handed out to the
22 students for them to read on their own, would it still
23 satisfy the teaching definition that you've used?

24 A. Sure. The authors who wrote it are teaching
25 the students that.

1 Q. I believe you testified that prior to
2 hearing this statement, it's your opinion that
3 students would probably have no idea what the word
4 "intelligent design" means?

5 A. No, I think what I said was that most
6 students probably wouldn't. I have no idea that --
7 there could be five or ten students who learned it in
8 church, came into the classroom and then hear
9 intelligent design again in the science classroom.

10 Q. Do you have any reason to believe that the
11 concepts of intelligent design are being taught in the
12 classroom?

13 A. Well, yes, there certainly was, the concept
14 that it's an alternate scientific theory. And
15 intelligent design's claim is that somehow evolution
16 is insufficient, has gaps and problems, and, ergo,
17 that supernatural causation has to come in and be
18 inserted in that point is implicit in that four
19 paragraphs. There are gaps and weaknesses or gaps and
20 problems with evolution theory and that the alternate
21 theory comes along and that's intelligent design.

22 The bashing happens with evolution. It's in
23 that four paragraphs. It's evolution that's only a
24 theory, it's evolution that has the gaps and problems.
25 And then you go down to intelligent design, it doesn't

1 mention any of intelligent design's gaps or problems
2 or that it's just a theory.

3 So, yes, I think they're learning a lot from
4 that mini lecture, or potentially could learn a lot
5 from that mini lecture.

6 Q. They also learn that because Darwin's theory
7 is a theory, it is a well-tested explanation that
8 unifies a broad range of observations. Correct?

9 A. I think that's the best sentence out of the
10 four paragraphs, as I stated previously.

11 Q. Sir, a science classroom in a public school
12 is a forum for inquiry. Correct?

13 A. Sure.

14 Q. I'm sorry?

15 A. Sure.

16 Q. That would be a yes?

17 A. I'm sorry, yes.

18 Q. Now, you testified on direct about the -- I
19 believe you described it as a special opt-out policy.

20 A. I don't remember using those words, but I
21 remember we talked about the students can opt out from
22 hearing the statement.

23 Q. Is it your understanding that the Dover
24 School District has a very broad opt-out policy that
25 would allow a student to opt out of the entire section

1 on evolution if they wanted to?

2 A. Well, that's unfortunate, but I was not
3 aware of that, no.

4 Q. Was it your understanding that they only had
5 a special opt-out that dealt just with this one-minute
6 statement?

7 A. I hadn't given it any thought.

8 Q. Would you agree that there's a genuine
9 scientific debate regarding the mechanisms of
10 evolution?

11 A. That's what the scientific community
12 reports.

13 MR. MUISE: No further questions, Your
14 Honor.

15 THE COURT: All right. Thank you,
16 Mr. Muise. Redirect, Mr. Walczak.

17 MR. WALCZAK: Just a couple of areas.

18 REDIRECT EXAMINATION

19 BY MR. WALCZAK:

20 Q. Dr. Alters, Mr. Muise asked you a few
21 questions, and you seemed tentative in your answers.

22 For instance, he asked you about the origin of --

23 A. I'm having trouble hearing you. Sorry.

24 Q. I'm sorry. Mr. Muise asked you some
25 questions, and you seemed tentative in your answers.

1 For instance, he asked you about the origin of life,
2 and you seemed uncertain about that answer.

3 A. Well, there's definitely a scientific
4 explanation and various scientific explanations
5 concerning the origin of life.

6 Q. He also asked you about some of the science
7 contained in *Pandas*. Do you recall that?

8 A. Yes.

9 Q. You're not a scientist?

10 A. No.

11 Q. And you don't claim to be a scientist?

12 A. No.

13 Q. Your expertise is in science education?

14 A. Correct.

15 Q. And so whether it's good or bad science, you
16 take your cue from the scientific community?

17 A. Absolutely. I would hope all science
18 educators do.

19 Q. So you don't make these independent
20 determinations on whether it's good or bad science,
21 that's done by the scientific community?

22 A. Correct.

23 Q. And science educators simply want to report
24 accurately what the scientific community is discussing
25 at the time?

1 A. Correct.

2 Q. And the positions taken by the scientific
3 community?

4 A. Correct.

5 Q. Matt, could you put up Plaintiffs'
6 Exhibit -- I believe it's 131. Mr. Muise asked you
7 about a change to the four-paragraph statement, and
8 you weren't quite sure what the changes were.

9 A. Correct.

10 Q. So the statement I showed you on direct exam
11 was the one read to students in January.

12 A. Okay.

13 Q. What we've put up here, Plaintiffs' Exhibit
14 131, is the statement that was read to students, I
15 believe it was in June whenever students were being
16 taught evolution in the second semester. Could you,
17 Matt, highlight the four-paragraph statement.

18 Now, Dr. Alters, let me just represent to
19 you that as best I understand it, the only change made
20 from the January to the June statement is in the third
21 paragraph. And I don't know, Matt, are you in a
22 position to pull up that paragraph from January?

23 So I believe the top statement highlighted
24 is from Exhibit 124, the January statement. That same
25 paragraph highlighted below is from the June

1 statement. Do you see the changes made between those
2 two statements, Dr. Alters?

3 A. Yes. Apparently what's been inserted is "in
4 the library along with other resources," yes.

5 Q. Does this change to the statement in any way
6 alter your opinion that this is poor pedagogy and
7 misleads students about science?

8 A. I think it makes it worse.

9 Q. Why is that?

10 A. Well, now the sentence reads, The reference
11 book *Of Pandas and People* is available in the library,
12 along with other resources for students who might be
13 interested in gaining an understanding of what
14 intelligent design actually involves.

15 It sounds like now there's even more books
16 for this nonscience that was read in the science
17 classroom to go check out, apparently to improve their
18 understanding of science, even though they're not
19 science. It makes it worse.

20 If I read that and I think if a 15-year-old
21 heard that -- it's right in between -- the previous
22 sentence is talking about intelligent design. The
23 following sentence is talking about intelligent
24 design. And what's squeezed in between is, The
25 reference book *Of Pandas and People* is available in

1 the library along with other resources for students
2 who might be interested, blah, blah, blah.

3 So I think it made it worse. I think it
4 makes it sound like there are lots of resources the
5 students should go seek out concerning intelligent
6 design.

7 Q. So regardless of what books may actually be
8 in the library, they don't identify anywhere in the
9 statement what those books are?

10 A. No.

11 Q. And you're saying that the reasonable
12 interpretation of this is that, oh, there are lots of
13 books now to support intelligent design?

14 A. That's how it reads to me.

15 Q. I want to clarify one last -- what seemed to
16 be a little point of confusion. Mr. Muise was asking
17 you about consensus in the scientific community about
18 the occurrence of evolution and the theory of
19 evolution, and I think one of the things that
20 Mr. Muise was trying to get you to say is that there
21 is not overwhelming support in the scientific
22 community for the mechanism of natural selection.

23 Do you believe that there is overwhelming
24 support in the scientific community that natural
25 selection is one of the mechanisms of change?

1 A. Yes, there is. The discussions, as I
2 understand them in the scientific community, are among
3 natural selection's relative role compared to other
4 mechanisms of evolution.

5 Q. And natural selection was really the
6 innovation, if that's the right word, that Darwin
7 brought to the science?

8 A. Yes. Darwin used the word "theory"
9 correctly. It's an explanation. So it's evolution,
10 and what's the theory, what's the explanation?
11 Natural selection is what he posited.

12 Q. And is it your understanding that science,
13 in the 150 years since Darwin, has built upon his
14 findings and has really confirmed that natural
15 selection is one of the evolutionary processes?

16 A. That's what I understand the scientists
17 reporting to me, yes.

18 MR. WALCZAK: I have no further questions.

19 MR. MUISE: Recross, Your Honor?

20 THE COURT: Recross.

21 REXCROSS-EXAMINATION

22 BY MR. MUISE:

23 Q. Dr. Alters, the other resources --

24 A. Yes.

25 Q. -- that are referenced in the second version

1 of the statement, do you see that, sir?

2 A. Yes.

3 Q. If I represent to you that some of these
4 other resources are actually books written by experts
5 who have testified in this case on behalf of
6 plaintiffs, would that change your opinion?

7 A. Change my opinion of what?

8 Q. Well, you offered an opinion, you thought
9 that this actually made this statement more
10 detrimental.

11 A. Yes, but what you just told me isn't being
12 read to the students.

13 Q. So it makes no difference to you then what
14 the resources are in the library that the students are
15 directed to?

16 A. Okay, now I have two problems with the
17 sentence. The first problem is what I just stated,
18 that now the students think there are more resources.
19 Now I have another problem with it that apparently
20 you're going to have resources arguing that the other
21 resource, *Pandas and People*, is not science.

22 So now we've said there's this alternate
23 scientific theory, and now you're sending them, I
24 guess, to the -- yes, to the library to reference
25 books that will say it's not science, even though an

1 administrator at the school has said it's science by
2 reading and giving this mini lecture to them.

3 Now I'm even more confused. I'm confused as
4 an educator, and I think the teachers will be
5 confused, and I think the students will be confused.
6 So, yes, it's worse.

7 MR. MUISE: No further questions.

8 THE COURT: All right. This will be an
9 appropriate time for us to break after we take the
10 exhibits. Let's do the exhibits before we adjourn.
11 Plaintiffs' 182 is -- Dr. Alters, you may step down.
12 Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: We have Dr. Alters' CV. P212 is
15 the Defending Evolution text. P192 and P198 are
16 already in. P183 is the NSTA statement on teaching
17 evolution. P186 is the NSTA position statement on
18 teaching evolution. P700 is teaching evolution. P210
19 is already in. So we have P182, P212, P183, P186, and
20 P700. And, Mr. Walczak, your pleasure with respect to
21 those?

22 MR. WALCZAK: We would move all of those
23 exhibits.

24 THE COURT: Mr. Muise?

25 MR. MUISE: No objections, Your Honor.

1 THE COURT: All right. Then all those are
2 admitted. On redirect we have P131, which is the
3 revised statement. That may be in. I'm not sure. I
4 don't show it as in, though. Mr. Walczak, do you want
5 to move P131 in? I don't show it as being in, but it
6 may be. That is the revised statement that you just
7 referred to that you put up.

8 MR. WALCZAK: If it's not in, this seems
9 like an opportune time to move it in.

10 MR. GILLEN: It should be in, Your Honor.

11 THE COURT: I'm thinking it is, but we
12 didn't show it as --

13 MR. WALCZAK: I'm being told it was moved in
14 on September 27th.

15 THE COURT: That memory is better than mine,
16 and I'll accept it. So we'll note that it's in, and
17 if it's not in, it will go in with this witness, we'll
18 stand corrected. I don't have any other exhibits, and
19 I don't have any exhibits on cross. Mr. Muise, any
20 exhibits that I'm not aware of?

21 MR. MUISE: Your Honor, the only thing we
22 referenced was the *Biology* book.

23 THE COURT: Which is already in, I think.
24 Well, I don't know if it's in, but it was referred to.
25 You don't want to move that in, do you?

1 MR. MUISE: Not at this time.

2 MR. WALCZAK: Your Honor, we'd just clarify
3 that 212, we'd move the entire book into evidence.

4 THE COURT: That was the sense of what I
5 thought you were doing. You don't object to that, do
6 you?

7 MR. MUISE: No, Your Honor.

8 THE COURT: The entire book is in because I
9 don't have an excerpt noted. All right. Anything
10 further before we recess from counsel?

11 MR. GILLEN: No, Your Honor.

12 MR. ROTHSCHILD: One more thing I wanted to
13 raise, Your Honor, if this is a good time. We had
14 requested last week that Dr. Forrest's two reports and
15 what I'll call the extra exhibits that she didn't
16 testify about be moved into evidence for the purposes
17 of the record on the motion in limine, both
18 qualifications and methodology.

19 MR. GILLEN: Your Honor, we've given it a
20 lot of thought, and I think for the record we're going
21 to object, for the simple reason that the whole scope
22 of that material -- as you know, we tried to work out
23 the presentation of the witness through the plaintiffs
24 and then voir dire. Essentially it seems like it
25 creates the risk, from our standpoint, of vastly

1 expanding the amount of material that can be relied on
2 for her expertise and qualifications, whereas the
3 questioning didn't reach all of those and in some
4 points would have.

5 THE COURT: Well, let me ask you this. If
6 you have an appellate issue with respect to her
7 testimony as an expert, how are you going to argue it
8 if you don't have the report in?

9 MR. GILLEN: Well, it would seem like the
10 proffer is the typical way in which it's done. This
11 is rather unusual to try and get in the reports, which
12 are generally hearsay, to buttress that. And that's
13 my concern at this point, which is, there's a whole
14 bunch of additional material that's going to be added
15 to support the proffer that was not --

16 THE COURT: Well, as I said last week, I
17 assure you that if I would admit it, I'm not admitting
18 it for my consideration. I'll take her testimony on
19 the record as I allowed it over some objections.

20 I think, Mr. Rothschild, that it is more
21 helpful to the defense, conceivably, under most
22 circumstances I can think of, to have the whole report
23 in. But if it's only for appellate review and in the
24 event of a determination it's adverse to the defense,
25 in that situation I can't see where it necessarily

1 helps the plaintiffs in an event that there's a
2 determination adverse to the plaintiffs because she
3 testified. And I don't think that's going to be
4 necessarily an issue in that event.

5 You might want to give that some more
6 thought. And as I said, I will accept a stipulation,
7 if you want to craft a stipulation to protect
8 yourself. To be fair, you might not have had enough
9 time to think about a stipulation. If you want to --
10 and I'll accept if you don't want to enter a
11 stipulation and you want to object to it. That's
12 fine, and I'll make a ruling. But give it a little
13 bit more thought, because with a stipulation that it
14 is not for the Court's consideration at this level,
15 you know, you might want it in there.

16 Your appellate record is what it is. I
17 understand you say you're limited to the proffer, but
18 your argument went beyond the proffer. Your argument
19 went to what's in her record or what's in -- not
20 what's in the record, what's in her report, excuse me.
21 You might give that some thought.

22 MR. ROTHSCHILD: Your Honor, I mean, it
23 seems like the way they have characterized their
24 argument is, look, she's just picking out a few quotes
25 that are supportive of her viewpoint, and what we want

1 to show is her methodology which is reflected in the
2 book, which is already in evidence, and the report,
3 which encompasses quite a bit of information --

4 THE COURT: Well, but that could be
5 problematic, too. That may go too far. I think, to
6 respond to what Mr. Gillen is saying, the one thing
7 that you're going to have to be careful about is, you
8 know, your lips are sealed and you've estopped any
9 argument that you're going to make based upon what's
10 in that report if you don't let it in the record. You
11 are, indeed, restricted to the proffer. Now, maybe
12 you've thought about that and that's what you want to
13 do.

14 MR. GILLEN: No, actually, Your Honor, the
15 way you've put it to me today, it does warrant further
16 consideration. Let me see if I grasp your mind on
17 this. What you're saying is, for the purpose of your
18 decision to admit her, your understanding is that that
19 decision is based on the proffer and the voir dire and
20 cross. Am I correct?

21 THE COURT: Yes, and not the report itself.
22 The report was considered by me for the purpose of
23 ruling on the motion in limine. Once we got beyond
24 that --

25 MR. GILLEN: Okay. Thank you, Your Honor.

1 Let me give it a little more thought in light of what
2 you suggested, and perhaps we can reach an
3 accommodation.

4 THE COURT: Again, as I've reminded you, and
5 it's not to insult your intelligence, you all know
6 this, but it's a bench trial, and I'm perfectly
7 capable of setting that aside for the purpose of my
8 ruling in this case, and you're simply making it a
9 part of the record for whatever you may want to do.

10 I mean, we can postulate, you know, to the
11 end of the day about who might need it for what, but
12 if I'm not going to use it and if you have a
13 stipulation that I'm not going to use it for my
14 determination, I don't know why it creates a problem.
15 And it leaves both sides free to argue on another day
16 and another time and another court, if that's
17 necessary, with respect to what's in the report.
18 There's not such urgency that we have to make this
19 determination now.

20 MR. ROTHSCHILD: Your Honor, I just want to
21 make clear that what we're proposing is not simply the
22 admission of the report, but also the support for her
23 report, meaning that there were many exhibits, many of
24 which have been already admitted through her direct
25 testimony, but there are also other exhibits that were

1 the corpus that she based her opinion on.

2 THE COURT: Well, and again, if you've got
3 to argue in another tribunal that there were, for
4 example, erroneous rulings as it related to letting
5 hearsay in, which is certainly an argument that you
6 made, a timely objection, then I don't know how you're
7 going to do that if you don't have at least some part
8 of the report, if not all of it, and the documents.
9 You're going to argue in a vacuum. And it seems to me
10 you may want to think about that.

11 MR. GILLEN: You have given me reason for
12 thought, Your Honor, and I'd like another opportunity
13 to revisit that issue with plaintiffs' counsel.

14 THE COURT: That's fine. And I'll just rely
15 on you to -- either of you or any of you to bring that
16 up at a later point in time. We'll tie up the loose
17 end. I'm sure somebody will remind me.

18 I have some matters I have to attend to.
19 Let's take about a 25-minute break at this point so I
20 can do some things I need to do, and we'll reconvene
21 at 3:25. We'll be in recess.

22 (Recess taken.)

23 THE COURT: We'll take our next witness.

24 MR. WALCZAK: The plaintiffs call Cindy
25 Sneath.

1 A. Boys.

2 Q. Are either of them enrolled in the Dover
3 Area School District?

4 A. Yeah. My oldest goes to Weiglestown
5 Elementary.

6 Q. What grade is he in?

7 A. Second.

8 Q. And do you have any plans to leave the Dover
9 Area School District?

10 A. No.

11 Q. Could you briefly tell us your educational
12 background?

13 A. Graduated high school, diploma, life
14 lessons, hopefully a dose of common sense.

15 Q. And are you employed outside the home?

16 A. Yes.

17 Q. And what do you do?

18 A. My husband and I own a small business. I'm
19 vice president.

20 Q. What kind of business is that?

21 A. Appliance repair and installations.

22 Q. And do you have any particular background in
23 science?

24 A. No.

25 Q. Do you have a personal interest in science?

1 A. Not personally, no. You know, I have an
2 interest for my son, who actually shows a great
3 interest in science.

4 Q. And which child is that?

5 A. My second-grader, my seven-year-old.

6 Q. And why do you say he shows a great
7 interest?

8 A. Many reasons. You know, don't get him
9 started on talking about the NASA space shuttle
10 program. I mean, just everything he does is very
11 science-oriented. It's just something he obviously
12 enjoys.

13 Q. Prior to October of 2004, had you attended
14 any Dover Area school board meetings?

15 A. No.

16 Q. Prior to October, 2004, did you learn that
17 there was discussion about changes to the school
18 district's biology curriculum?

19 A. Yeah.

20 Q. Now, if you didn't attend school board
21 meetings, how did you learn that?

22 A. Through the newspaper. I get it delivered
23 daily, the evening paper.

24 Q. And which paper is that?

25 A. That's the York Dispatch.

1 Q. And do you regularly read the newspaper?

2 A. Yeah, pretty regularly.

3 Q. And do you recall about when it was that you
4 first realized that there was some controversy over
5 the biology curriculum?

6 A. Looking back, you know, I'm thinking it was
7 probably over the summer when it really first appeared
8 on my radar screen. But it really didn't become a
9 reality until October and when the policy was passed.

10 Q. When did you attend your first board
11 meeting?

12 A. It would have been the very next board
13 meeting.

14 Q. Very next meaning the one --

15 A. November. I'm thinking November would have
16 been the next month. You know, they have two meetings
17 a month, so that first one in November.

18 Q. So you didn't attend the October 18th board
19 meeting?

20 A. Correct.

21 Q. It would have been two weeks after?

22 A. Right.

23 Q. So the only source of information you had
24 prior to November about what the school district was
25 doing or planning on doing was from news reports?

1 A. Correct.

2 Q. And can you tell us what it is that you
3 understood was going on at these school board
4 meetings?

5 MR. GILLEN: Objection, Your Honor. Just
6 for the record preserving my hearsay objection on any
7 information that she has no personal knowledge about
8 but is relying on hearsay statements in the newspaper.

9 MR. WALCZAK: Your Honor, I'm asking her
10 about her state of mind and what it is that she knew
11 or what it is that she understood from whatever source
12 she may have gotten it.

13 THE COURT: Why don't you rephrase the
14 question to be precise as to the source. And you may
15 have been precise, but I didn't hear it exactly that
16 way. So I'll sustain the objection to the extent that
17 you can be more precise. But consistent with my prior
18 rulings, we may permit reference to the newspaper
19 articles to refresh recollection, et cetera. So be a
20 little bit more precise.

21 BY MR. WALCZAK:

22 Q. So you had not personally attended any
23 school board meetings?

24 A. Correct.

25 Q. Had you framed some understanding, did you

1 have some understanding, whether right or wrong, about
2 what was going on in the Dover School District prior
3 to October?

4 A. Yes. I mean, you know, what I had been
5 reading and some of the things I've read were
6 outlining the controversy and basically stating that
7 there's a science class and, you know, talk of
8 creationism and religious ideas.

9 There were science people coming forward. I
10 know the guy from York College had made a statement
11 about it not being science. There was a guy from
12 Kansas that had made a comment about this not being
13 science. There was the word "creationism" being used.

14 And so, you know, it just seemed to be, you
15 know, the science versus religious thing culminating.
16 And that would have been my perception.

17 Q. At some point did you --

18 MR. GILLEN: Your Honor, I know that we've
19 got a standing objection, and I don't want to vex the
20 questioner or the witness, but, I mean, she has no
21 personal knowledge, so what she's basically testifying
22 to is hearsay.

23 THE COURT: Well, it doesn't go to the
24 truth, does it?

25 MR. GILLEN: Well, I agree that if they're

1 not offering it for the truth of the matter and just
2 why she's attending board meetings, that's fine, but
3 to the extent that --

4 THE COURT: Well, that wasn't the question.
5 The question wasn't why she attended board meetings,
6 the question was what she had heard or knew about with
7 the understanding she hadn't been to a board meeting.
8 And now she's testified, as I understand it, sort of
9 broadly about what she read in the newspaper, although
10 I'm not sure of all the sources. The answer was
11 perhaps a little bit broader than that. That doesn't
12 go to the truth. It does go to the effect prong
13 regardless of truth, doesn't it?

14 MR. GILLEN: Well, I would say no. As you
15 know, that's an issue that we're going to revisit in
16 connection with the reporters, but, I mean, to say
17 that she's acting based on information she received in
18 the newspapers saying, in effect, that information was
19 true.

20 THE COURT: Well, we didn't get to that
21 point yet.

22 MR. GILLEN: Right.

23 THE COURT: If we get to that point, that's
24 a separate argument.

25 MR. GILLEN: Okay.

1 THE COURT: But right now, if you have a
2 hearsay objection based upon the testimony that she
3 just gave --

4 MR. GILLEN: Which is based on hearsay.

5 THE COURT: Well, it's not hearsay if it
6 doesn't go to the truth, and it didn't go to the truth
7 yet.

8 MR. GILLEN: Okay.

9 THE COURT: Now -- go ahead.

10 MR. GILLEN: I'm sorry, Your Honor. With
11 that understanding that it's not evidence admissible
12 for the purpose of the truth of the matter she's
13 testifying to, that, you know, if it's what she
14 thought, I can't object to that. I agree. But if
15 it's offered for the truth, then I object based on
16 hearsay.

17 MR. WALCZAK: It is offered purely to
18 establish her state of mind and what her understanding
19 was based on the sources that were available to her at
20 the time. So this is not offered for the truth of
21 what's in those articles.

22 MR. GILLEN: Okay.

23 THE COURT: And we may have a disagreement
24 that we'll endure as to the effect prong under *Lemon*
25 because I don't think it requires, in every case, that

1 the recipients -- that the information received by the
2 recipient, in this case her, that it be true, does it?

3 MR. GILLEN: I would think that the effects
4 can only be established by admissible evidence, and
5 that is evidence that is admissible for substantive
6 purposes.

7 Judge, I mean, I don't want to put too fine
8 a point on it, but, you know, Chicken Little could
9 have said the sky was falling, you know, Foxy-Woxy
10 could have reported it, and Henny-Penny could have
11 read it, thought it was true, but as the story goes,
12 the King knew better.

13 And you can't convict someone based on
14 hearsay. You can't demonstrate effects except through
15 admissible evidence, and that admissible evidence is
16 non-hearsay. And by any other measure, effects have
17 to be proven by admissible evidence.

18 THE COURT: But the effect is subjective,
19 isn't it?

20 MR. GILLEN: No, it's objective, and it's
21 based on admissible evidence. It has to be in a court
22 proceeding, Your Honor. You can't use the effects
23 prong to let in a ton of hearsay. If that was the
24 case, you could prove the whole case through newspaper
25 clippings.

1 MR. WALCZAK: Your Honor, first of all, you
2 know, I think if you look at *Doe versus Santa Fe*,
3 certainly if you look at *McCreary*, I'm pretty sure in
4 *Selman* -- and Mr. Katskee unfortunately left for the
5 holidays, and he's our real expert on this, but I
6 think in all of those cases, and in *Wallace versus*
7 *Jaffrey*, the Court looked at newspaper articles to
8 help gauge the effect on the community.

9 And this is not offered -- you know, this is
10 not there for hearsay purposes. This is not for the
11 truth of the matter asserted. It is for what the
12 reasonable, average person in the community is seeing
13 or believing. And, you know, as long as I don't have
14 to answer with a countering rhyme, let me just --
15 which I was duly impressed by that, but this is --

16 MR. GILLEN: I've got young kids.

17 MR. WALCZAK: I do, too, but they're older.

18 MR. GILLEN: And it fits.

19 MR. WALCZAK: Your Honor, it is the fact
20 that this is out there, right or wrong. And some
21 people are forming an impression about that, again,
22 right or wrong. But the impression here in the
23 community is, based on reading everything that's being
24 published, that this is a religious dispute.

25 THE COURT: How else do you get effect?

1 MR. GILLEN: By bringing in evidence of what
2 actually happened and measuring it on the part of
3 witnesses who were actually there.

4 THE COURT: But the witness who was there,
5 once it hits that witness, it becomes a subjective
6 exercise, whether they're there or whether they read
7 it in the paper.

8 In other words, you have a dispute about
9 what was said at these school board meetings. You
10 have school board members who deny, as I understand
11 it, that they said certain things that have been
12 attributed to them. So if a witness says that he or
13 she heard something and that's already in dispute,
14 what am I to do with that?

15 MR. GILLEN: But, Your Honor, from my
16 perspective, that's the point. I mean, the effect of
17 a newspaper article is the effect of a newspaper
18 article. And that newspaper article, if it could be
19 established without speculation, for one thing -- I
20 mean, just look at what you're being asked to do here.
21 Ten thousand people could have read the paper. One
22 could have said, oh, my heavens, this is nonsense.
23 Another could have said, you know, they're at it
24 again. Who knows. Number one, it's pure speculation.

25 Number two, the effect is the effect of what

1 the reporter said. Look at these things. They look
2 at what one person has said, arguably, in a board
3 meeting and leave out what ten have said. How could
4 the board be responsible for that? It's hearsay.

5 THE COURT: Well, I think you make it too
6 fine a point. In the milieu and in the array of
7 information available to this average person, and I
8 think the cases are somewhat in -- they're not in
9 conflict, but are we -- who is the recipient?

10 I think some of them set up a sort of
11 reasonably intelligent person, but I think you're
12 placing too fine a point on it. I think within the
13 broad array of informational sources for measuring the
14 effect prong, in some cases, not all of them, would be
15 a newspaper.

16 MR. GILLEN: But, Your Honor, to --

17 THE COURT: And just to finish before you
18 argue.

19 MR. GILLEN: Sure.

20 THE COURT: What you're saying is for a
21 newspaper to be that, the veracity of the newspaper
22 article has to be tested. And once it goes through
23 that gate and it passes, then it's all right for the
24 effect prong, if I hear you correctly.

25 MR. GILLEN: What I'm saying is, if it's not

1 hearsay, then it is evidence and then it's admissible
2 for the purpose of proving liability, but if it's
3 hearsay, it is not. And by any other measure to say
4 that paper clippings are the proof of effect is to say
5 that they're proof of true effect.

6 THE COURT: So you're saying that if the
7 reporters testify and if I establish that the articles
8 are -- I know you don't want this, but if we get to
9 that point and I say that having tested the veracity
10 of the articles based on the reporters' testimony that
11 the articles are accurate and represent a true account
12 of what they saw and heard at the school board
13 meetings and if I admit that over your objection,
14 understandably, that that -- we're over that hurdle.

15 MR. GILLEN: I'm saying that you can admit
16 them if you find they are an exception to the hearsay
17 rule. Our position is still that it's not proof of
18 effects because the newspaper article itself is the
19 act of a newspaper reporter and not the board.

20 And if my clients are believed, what the
21 newspaper reporter chose to do is to create a totally
22 false and misleading impression about the actual board
23 deliberations, and therefore, no, they would not be --
24 I acknowledge, you are the gatekeeper on evidence, but
25 it wouldn't be proof of the effects because it's the

1 proof of what a newspaper reporter wrote.

2 THE COURT: Well, I'll close the loop by
3 saying this. I'm going to overrule the objection on
4 that basis. I think what you're left with is not
5 necessarily a technical argument on what is hearsay
6 and what's not. I don't see that. I don't think that
7 the hearsay objection can operate to prevent this type
8 of effect testimony.

9 However, I don't think that you're then
10 estopped from arguing that the information was so
11 unreliable that it ought not be considered for the
12 effect prong. I would rather err on the side of
13 letting it in at this point. You can argue from a
14 qualitative standpoint that it's just so unreliable
15 that a reasonable person should not have received that
16 for the effect that it's -- as it's being attributed.

17 MR. GILLEN: As you know, Your Honor, I'll
18 make the arguments you let me make, and I'll deal with
19 the rulings that you make.

20 THE COURT: All right.

21 MR. GILLEN: That's all I can say.

22 MR. WALCZAK: Your Honor, let me just make
23 one last point. In *McCreary*, which is the Supreme
24 Court's most recent pronouncement on the *Lemon* test,
25 the Court there -- there was a long discussion, and

1 they set up the reasonably informed observer. It's
2 not the reasonably informed observer who attended
3 those McCreary County board meetings.

4 THE COURT: I understand that.

5 MR. WALCZAK: It's the reasonably informed
6 observer, period. And they don't specify whether, you
7 know, it has to be established as accurate or
8 inaccurate information. And, you know, I mean,
9 Ms. Sneath, to some extent, is a person -- or to every
10 extent is a person who lives in this district, whose
11 information she got, like other people got, through
12 the newspaper, and what she knew as of October 18th
13 came from the newspaper, and she formed an
14 understanding.

15 THE COURT: Well, I will grant that all of
16 us should go back and look at the cases again, as if
17 we haven't already. We certainly have. But I think
18 you'll agree -- I think you'll agree that the cases
19 are not consistent in terms of *McCreary* does say --
20 and that's where the word "reasonable" popped into my
21 head -- sets up a particular test. But the cases are
22 somewhat inconsistent, and I think there's been some
23 confusion judicially with respect to who the recipient
24 is for the effect prong. And I've got to negotiate
25 that at some point.

1 But for the purpose of this witness, I'm
2 going to err on the side of caution and let it in
3 subject to, as I said, an argument by the defense
4 that, for example, consistent with *McCreary*, that that
5 reasonable observer should not have accepted that on
6 the effect prong.

7 I frankly think that's your better argument
8 to make than to stand so clinically on hearsay,
9 because I don't read the cases as saying that you had
10 to make a threshold hearsay determination on the
11 effect prong. So with that --

12 MR. GILLEN: I'll bear that in mind, Your
13 Honor.

14 THE COURT: With that extended, complicated
15 academic argument behind us, we'll proceed. Was there
16 a question on the floor?

17 MR. WALCZAK: Let me ask another question.
18 I'm not sure if there was.

19 BY MR. WALCZAK:

20 Q. So was there some point in time where your
21 interest really became focused on what was going on at
22 the school board meetings?

23 A. Do you mean, like, prior to the October 8th
24 or just anytime?

25 Q. At any point. As I understand it, you were

1 kind of generally following what was going on through
2 the news media?

3 A. Yeah. And it was very general. And that
4 would have started probably sometime in the summer, I
5 would think.

6 Q. But at some point your interest became
7 acute?

8 A. Yes.

9 Q. And when was that?

10 A. The closer it got to October 18th. And then
11 that meeting, you know, that next day in the paper
12 they had passed the curriculum change, and reality set
13 in, you know, this has happened.

14 Q. And was it about that time that you decided
15 that you wanted to find out more about this topic of
16 intelligent design?

17 A. Yes.

18 Q. And what did you do to educate yourself
19 about intelligent design?

20 A. Well, I had never heard the terminology, so,
21 you know, my inclination is typically to go to the
22 Internet, and that's where I started my research. And
23 there was a lot of information available.

24 Q. So let me just ask you, obviously you're on
25 the Internet, you're Internet savvy, how did you go

1 about researching intelligent design? Did you go to
2 Google or --

3 A. Yeah. Oh, yes, I always use Google.

4 Q. And what did you do?

5 A. Just type in intelligent design, and you get
6 a lot of hits. There's a lot of information to weed
7 through. There's a lot of just news lists, people
8 discussing it, but then there were more specific
9 places that, you know, gave you more specific
10 information.

11 Q. And how long did you spend looking at
12 intelligent design?

13 A. I researched it quite a bit. You know,
14 there was a lot of material to read. A lot of
15 times -- you know, you have small kids, you get
16 interrupted, you have to make dinner, whatever. You
17 know what I mean? But I'd go back in spare time that
18 I had to kind of look into it, because the further you
19 looked into it, the more I realized that this was not
20 just a local Dover issue. I became very aware that
21 this is an issue that is, you know, widespread.

22 Q. Do you remember some of the Web sites that
23 popped up when you did a search for intelligent
24 design?

25 A. Panda's Thumb, which led me to the NCSE Web

1 site, which was like a wealth of information. That
2 was really the big one that told me that, you know,
3 this was not just a small little issue here. I mean,
4 there were Web sites that people had done that had
5 been active in what was going on, and they kind of did
6 their own little pages with information that they
7 knew, specifically addressing how -- the method of
8 getting this done by going and appealing to a school
9 board and getting a few sympathetic members, just
10 outlining different things like that. So it was, you
11 know, just a wide variety.

12 Q. Did you find information in your Internet
13 search about the Wedge?

14 A. I'm sorry?

15 Q. Did you find information through your
16 Internet search about the Wedge?

17 A. Yes, yes. And I don't remember specifically
18 what site it was. There was a link to it. And then,
19 yeah, I read the Wedge document, which was kind of a
20 real eye-opener for me.

21 Q. And based on your own personal Internet
22 research, did you form some opinion as to what
23 intelligent design was?

24 A. Yeah.

25 Q. And what was that opinion?

1 A. It's basically equated to creationism.
2 It's, you know, all the same, you know, ideas with a
3 new name, is really what it appeared to me to be.

4 Q. Now, you started going to board meetings, I
5 believe it was the first meeting in November?

6 A. Yes.

7 Q. And that was because of your concern that
8 you thought they were now teaching creationism?

9 A. Yeah. What is going on? I mean, it was
10 time to get a firsthand account.

11 Q. And at some board meeting -- and have you
12 been a regular attendee since November?

13 A. I went to every board meeting until, I
14 think, over the summer. I just -- you know, you kind
15 of need a break after a while. But up until that
16 point, yeah, every meeting.

17 Q. And this was purely because of your concern
18 over this issue?

19 A. Absolutely.

20 Q. And at one of the November board meetings,
21 do you recall a board member Angie Yingling making
22 some comments?

23 A. Yeah. She wasn't making comments while she
24 was sitting -- you know, it wasn't during the meeting.
25 I think it was prior to an executive meeting. And she

1 was making comments to a reporter and --

2 Q. And were you present for these comments?

3 A. Yeah. I mean, it's a small room. And when
4 the meeting is done, everybody is kind of milling
5 around. You know what I mean? You're all kind of
6 right there. And we happened to be standing there,
7 and she was making the comment that she had regretted
8 her decision and that she had been called an atheist,
9 she had been called un-Christian.

10 And I felt bad because she had also talked
11 about, at that board meeting, about giving her
12 resignation. Now, she didn't do it at that meeting.
13 It was a long time until she ended up actually -- I
14 think officially stepping down. But that was like the
15 first time she talked about it. And so with her
16 saying that and then making these comments, it kind of
17 like made me feel bad.

18 And I interjected and I said to her, don't
19 quit. Why should you quit? You know, if you feel
20 strongly about the issue, you've changed your mind,
21 just keep revisiting the issue. And that was really
22 the extent of the conversation.

23 Q. But you overheard her make comments that
24 other board members had called her an atheist?

25 A. That's what she was saying as I was standing

1 there. And then, you know, as soon as she was done
2 saying that, I, like, intervened and encouraged her
3 not to quit.

4 Q. And do you remember the words that she used?
5 Did she use the word "atheist"?

6 A. Yes. She used the word "atheist," and she
7 used the word "un-Christian."

8 Q. Now, did you have an opportunity to speak to
9 Ms. Yingling again after that meeting?

10 A. She -- I can't remember exactly which board
11 meeting, but there was a particular board meeting she
12 had handed me her business card, and she was like,
13 call me, you know, and so I did. And I think I called
14 her -- it had to have been sometime in January. I
15 don't know, you know, exactly when.

16 Q. And this is January, 2005?

17 A. Correct. To see what she wanted. And she
18 actually wanted to know if I wanted to run for school
19 board with her, because at that time I think, you
20 know, that she was trying to make future plans. And,
21 you know, I really wasn't interested in doing that.
22 But, you know, the conversation kind of went from
23 there.

24 And I think it was an emotional time for
25 her. She was very emotional. She was very upset.

1 She felt she had been treated very badly. And I
2 remember her stating that she was working on her
3 resignation speech. So I know it was before she
4 actually, you know, resigned.

5 And, again, she kind of reiterated that same
6 thing to me, that, you know, if you're not their kind
7 of Christian or something to that effect and -- you
8 know, she was emotional.

9 Q. But do you remember those words, "their kind
10 of Christian," being said by her?

11 A. Yeah.

12 MR. WALCZAK: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 MR. WALCZAK: Matt, could you put up P127,
16 please.

17 BY MR. WALCZAK:

18 Q. Do you recognize what's been marked as
19 Plaintiffs' Exhibit 127?

20 A. Yes, I do.

21 Q. And what is it?

22 A. That I received in the mail. It was a piece
23 pretty much advocating what they had -- the curriculum
24 update that they had -- or the curriculum change that
25 they had passed.

1 Q. When did you receive this?

2 A. It's dated February, so I'm assuming,
3 because dates aren't always real good with me.

4 Q. And how did you receive this?

5 A. Through the mail.

6 Q. Through the U.S. mail?

7 A. Yeah. And I know other people that had
8 gotten it, as well. I, you know, had talked to
9 different people, and it was kind of the buzz of the
10 news going around that everybody had gotten this.

11 Q. Now, you just characterized this as
12 advocating intelligent design. I mean, why do you say
13 that?

14 A. Well, that was my perception. Two days
15 after I received this, I got a regular newsletter in
16 the mail. And, you know, this wasn't just telling
17 people this is what we've done, this is, look what
18 we've done, and Senator Rick Santorum agrees in the No
19 Child Left Behind, and, you know, all the -- what I
20 consider propaganda to go behind it.

21 Q. So you felt like they were trying to
22 convince you that intelligent design is a scientific
23 alternative to evolution?

24 A. Not just me, the community. That was my
25 perception.

1 Q. Now, you indicated that two days later you
2 got a newsletter in the mail. Who did you get a
3 newsletter from?

4 A. That's the regular Dover newsletter that
5 comes out.

6 Q. And how often does that newsletter come?

7 A. That I don't -- four times a year? I'm not
8 sure. But it's like -- it always looks the same. You
9 know, you can tell it's the regular Dover newsletter.

10 Q. So there is a newsletter that comes during a
11 regular schedule?

12 A. Yes, periodically.

13 Q. So is it clear to you that this biology
14 curriculum update was not a regular newsletter?

15 A. Well, I -- you know, in my mind, again, if
16 you just want to notify people about what you've done
17 or what a school board has done, I think it would have
18 just been reasonable to put it in a regular
19 newsletter. I mean, obviously this was an extra
20 expense to taxpayers. And as a taxpayer, you're
21 concerned about that.

22 Q. So this is not how you would want your tax
23 dollars spent?

24 A. No.

25 Q. Now, you said you have a seven and a

1 four-year-old. Can your four-year-old read this
2 newsletter?

3 A. No.

4 Q. Could your -- it sounds like you have a
5 quite inquiring seven-year-old. Could he read this
6 newsletter?

7 A. He could read a lot of it. A couple words
8 we might have to help him out, but he's a pretty good
9 reader.

10 Q. Is it your perception that this was geared
11 towards your children?

12 A. No, no, I would say this is geared towards
13 parents, taxpayers, constituents.

14 Q. Do you believe you've been harmed by what
15 the Dover Area School District has done in promoting
16 intelligent design?

17 A. Yeah, I do.

18 Q. And how have you been harmed?

19 A. Well, you know, as a parent, you want to be
20 proactive in your child's education. I mean,
21 obviously I'm not an educator. I have no big degrees.
22 I want to be proactive, but I depend on the school
23 district to provide the fundamentals. And I consider
24 evolution to be a fundamental of science.

25 And I'm quite concerned about a cautionary

1 statement. I am quite concerned about this
2 intelligent design idea. I do think it's confusing.
3 I don't think it adds to his education.

4 And at the end of the day, I mean, in my
5 mind, intelligent designer, I mean, the word
6 "designer" is a synonym for Creator, and, you know,
7 that takes a leap of faith for me, you know. And I
8 think it's my privilege to guide them in matters of
9 faith, not a science teacher, not an administrator,
10 and not the Dover Area School Board.

11 MR. WALCZAK: I have no further questions.

12 THE COURT: All right. Thank you,
13 Mr. Walczak. Mr. Gillen, cross-examine.

14 CROSS-EXAMINATION

15 BY MR. GILLEN:

16 Q. Mrs. Sneath.

17 A. Hello, Mr. Gillen.

18 Q. Good afternoon. I met you at your
19 deposition and will ask you a few questions today
20 about your trial testimony. I just want to again make
21 clear now, you didn't attend board meetings until
22 November, 2004. Correct?

23 A. That's correct.

24 Q. And you didn't speak with any board members
25 prior to November, 2004. Correct?

1 A. That would be correct.

2 Q. And you didn't speak with any of the science
3 faculty at the high school prior to that time.

4 Correct?

5 A. That's correct.

6 Q. In fact, you've never spoken to the science
7 faculty. Correct?

8 A. Yeah. No reason.

9 Q. You say that you -- you've done some
10 personal reading in connection with this dispute about
11 science?

12 A. Yes.

13 Q. And you've looked at material on the
14 Internet. Correct?

15 A. That's correct.

16 Q. And you've looked at material by Discovery
17 Institute. Correct?

18 A. I did go to the Discovery Institute Web
19 site, but I can't say that there was a whole lot of
20 information there. It's not like they critique their
21 own, you know, ideas, and so, you know, it wasn't that
22 great of a Web site, actually.

23 Q. Sure. But you did learn that approximately
24 300 scientists agree with the idea that they were
25 promoting? Well, let me ask you this.

1 A. I have heard that somewhere, but I don't
2 know if I actually obtained that through their Web
3 site.

4 MR. GILLEN: Your Honor, may I approach the
5 witness?

6 THE COURT: You may.

7 MR. GILLEN: Thank you.

8 BY MR. GILLEN:

9 Q. Mrs. Sneath, I'd ask you to look at your
10 deposition, which I have just handed you, Page 9.

11 A. Page 9.

12 Q. Looking at that, it references that you've
13 heard that 300 scientists agree with this idea?

14 A. Yeah, I heard it somewhere. I just
15 wasn't -- I thought you might have been asking did I
16 read that from their Web site, and that I did not
17 remember doing. But I have heard that comment that
18 300 scientists have supported it.

19 Q. And you've read, you said, somewhere on the
20 Internet about the Wedge strategy?

21 A. Yes.

22 Q. Have you ever read a document called, Wedge
23 Strategy, So What?

24 A. No.

25 Q. Now, there was a time in which you believed

1 the board was going to require the teaching of
2 intelligent design with equal time in the classroom.
3 Correct?

4 A. I think it was my understanding that it
5 could be taught if the teacher wanted to, not
6 necessarily the equal time.

7 Q. Okay. And that understanding was based on
8 what you read in the paper?

9 A. Yes, that would have been.

10 Q. But the board didn't do that. Correct?

11 A. No, not as it stands now. Is that what
12 you're asking?

13 Q. Yes.

14 A. Okay.

15 Q. Likewise, you had a belief that the text of
16 *Pandas* was going to be used in the classroom.
17 Correct?

18 A. Originally, yes, my understanding was that
19 it was to be placed in the science classroom.

20 Q. But they did not use it in the classroom.
21 Correct?

22 A. Correct.

23 Q. It's in the library. Correct?

24 A. Correct.

25 Q. And you don't have an objection to that?

1 A. I don't have an objection to them being in
2 the library. I probably have an objection to, you
3 know, 20 copies being in the library just for the fact
4 that, I mean, libraries don't have much space, and, I
5 mean, 20 books of any one book is kind of a waste of
6 space.

7 Q. Have you been to the library, Mrs. Sneath?

8 A. Yes.

9 Q. Do you know how many books are on the shelf
10 right now?

11 A. 24, I believe.

12 Q. So your objection is based on the space?

13 A. Yeah. A library just has a limited amount
14 of space, and I don't remember seeing 20 of any other
15 book being there. I mean, to me, put a couple out and
16 let's leave some room for some others, perhaps.

17 Q. You understand it's a reference text.
18 Correct?

19 A. I understand they call it a reference text,
20 correct.

21 Q. And you don't?

22 A. No. I don't really consider it a reference
23 text.

24 Q. You don't have any science education, do
25 you, Mrs. Sneath?

1 A. That's correct.

2 Q. Now, you've said that you recall Angie
3 Yingling saying something about being called an
4 atheist or un-Christian?

5 A. That's correct.

6 Q. You know that Angie Yingling voted for the
7 curriculum change. Correct?

8 A. Originally she did, that's correct.

9 Q. But it's also true that you can't
10 necessarily make the connection between her statements
11 and her vote on the curriculum. Is that correct?

12 A. No, I wouldn't say that I could. I mean,
13 really what I was saying is that she had regretted
14 making that decision to vote for it and made the
15 comments in relationship to that.

16 Q. But you can't necessarily make a connection
17 between those comments and her vote on the curriculum
18 change, can you?

19 A. No, I can't.

20 Q. Now, I understand you believe that
21 intelligent design is not science based on what you've
22 read on the Internet. Correct?

23 A. Yes, that is my belief.

24 Q. And based on your reading, also, your
25 personal reading, you have the opinion that

1 intelligent design is creationism. Correct?

2 A. That is correct.

3 Q. I want to ask you about the newsletter. Is
4 it your position that the district shouldn't have put
5 out a newsletter addressing this controversy?

6 A. No, that's not my position. I think the
7 district could have easily advised its constituents in
8 the regular newsletter instead of paying extra money
9 for this newsletter. And to me this was not simply a
10 newsletter, this is what we've done. I mean, this was
11 more than that. This was what we've done, and this is
12 who stands behind it, and this is, you know, what
13 makes it a great thing.

14 Q. So it's information about intelligent
15 design. Correct?

16 A. Yes, it's advocating intelligent design.

17 Q. And it's information about the curriculum
18 change. Correct?

19 A. Yes.

20 Q. So that would be additional information you
21 received in addition to your personal reading on the
22 Internet and so on. Correct?

23 A. Yeah.

24 Q. Your children are what ages, Mrs. Sneath?

25 A. Seven and four.

1 Q. So none of them have had the statement read
2 to them. Correct?

3 A. No.

4 Q. You understand that evolutionary theory is
5 the theory that's being taught in classrooms at Dover?

6 A. That is my understanding.

7 (Buzzing noise.)

8 THE COURT: That's a trick we do to try and
9 limit cross-examination.

10 MR. GILLEN: Judge, I have been a model of
11 brevity.

12 THE COURT: Just keep your voice up and stay
13 away from the mic.

14 MR. GILLEN: I'll try and do that.

15 BY MR. GILLEN:

16 Q. You understand that the biology text that
17 was recommended by the science faculty was, in fact,
18 purchased?

19 A. Yes, I do understand.

20 Q. That's the text that's assigned to students.
21 Correct?

22 A. Yes.

23 MR. GILLEN: No further questions, Your
24 Honor.

25 THE COURT: You didn't have to take it that

1 seriously. All right. Any redirect by Mr. Walczak?

2 MR. WALCZAK: No, Your Honor.

3 THE COURT: We could take another witness
4 and at least get started if you want to, if you have
5 one.

6 MR. HARVEY: Yes, Your Honor.

7 THE COURT: Why don't we do that.

8 MR. HARVEY: The plaintiffs call to the
9 stand Plaintiff Steve Stough.

10 THE COURT: And I noted no exhibits. I'll
11 stand corrected if --

12 MR. WALCZAK: It's just the newsletter which
13 is already in evidence.

14 THE COURT: It's already in. All right.

15 STEVEN STOUGH, called as a witness, having
16 been duly sworn or affirmed, testified as follows:

17 THE CLERK: State your name and spell your
18 name for the record.

19 THE WITNESS: My name is Steve Stough,
20 S-t-e-v-e-n, S-t-o-u-g-h.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MR. HARVEY:

24 Q. Good afternoon, Mr. Stough. Could you
25 please tell us where you live.

1 A. Yes. I reside at 4407 Belmont Road, Dover,
2 Pennsylvania, 17315.

3 Q. And how long have you lived there?

4 A. I've lived at that address for 12 years.
5 I've lived in Dover Township for 20.

6 Q. Do you have any children?

7 A. Yes. I have a son who is 21 and a daughter
8 who is 14.

9 Q. Could you please tell us the first name of
10 your daughter?

11 A. Sure. My daughter's first name is Ashley.

12 Q. And where does Ashley attend school?

13 A. She attends school at the Dover Area High
14 School.

15 Q. What grade is she in?

16 A. She's in the ninth grade.

17 Q. Is she taking biology right now?

18 A. Yes, she is. She's in Jen Miller's honors
19 class.

20 Q. Can you tell us what you do for a living?

21 A. Yes. I teach life science at Southern
22 Middle School in Southern York County School District.

23 Q. What is life science?

24 A. It's a seventh-grade life science
25 curriculum. About a third of the year includes work

1 with inquiries, scientific method. Then two-thirds of
2 the year would be a very basic life science class,
3 characteristics of living things, chemistry of living
4 things, cell theory, germ theory, at a very basic
5 level.

6 Q. You're a science teacher?

7 A. Yes.

8 Q. How long have you been a science teacher?

9 A. I've been a science teacher -- I've been a
10 teacher for 29 years.

11 Q. Have you been teaching science that whole
12 time?

13 A. No, I have not. I've been teaching science
14 for about 15 years.

15 Q. Do you have any other jobs other than your
16 job as a science teacher?

17 A. Sure. At Southern York County School
18 District, Susquehannock is the high school. I'm the
19 head boys and girls track and field coach, and I'm
20 also the head cross-country coach for boys and girls.

21 Additionally, I serve on the strategic
22 planning committee and am part of the staff
23 utilization subcommittee and the technology
24 subcommittee.

25 Q. Please tell us just briefly your educational

1 background.

2 A. Okay. I graduated from West York in 1973.
3 In 1977, I graduated from Penn State with a degree in
4 bachelor's of elementary education. I continued my
5 education at Millersville and Wilkes and received my
6 master's equivalency from the Department of Education.
7 And as a result of the No Child Left Behind, I had to
8 take a practice test to get additional certification
9 so that I could teach science in the middle school.

10 Q. And how old are you?

11 A. I'm 50 years old.

12 Q. Do you read a newspaper?

13 A. Yes, I do.

14 Q. Tell us what newspapers you read on a
15 regular basis.

16 A. I read the York Dispatch and the York Daily
17 Record.

18 Q. How often do you read them?

19 A. I read them every day.

20 MR. GILLEN: Your Honor, just for the
21 record, a standing objection to the hearsay from the
22 newspaper.

23 THE COURT: All right. The objection is
24 noted for the same reason as interposed with the last
25 witness. The objection is overruled.

1 MR. GILLEN: Thank you.

2 BY MR. HARVEY:

3 Q. Did you say you read them on a daily basis?

4 A. I read them every day, yes.

5 Q. How long have you been reading them on a
6 daily basis?

7 A. For a long time, many years.

8 Q. What about when you're on vacation, do you
9 read them when you're on vacation?

10 A. This is my sickness. I'll take my computer
11 along, and we have dial-up service, and I will read
12 them online every day.

13 Q. Did you attend any meetings of the Dover
14 Area School Board in 2004?

15 A. In 2004, I attended the December 1st
16 meeting, the December 4th meeting, and the
17 December 20th meeting.

18 Q. So you didn't attend any meetings in 2004
19 before December?

20 A. No, I did not.

21 Q. And did there come a time when you learned
22 that the Dover School Board was considering approval
23 of a biology textbook?

24 A. Yes.

25 Q. Do you know when that was?

1 A. That would have been in early June of 2004.

2 Q. Tell us, please, the source of your
3 information.

4 A. That would be the newspapers, both papers.

5 Q. And I'd like to know, do you remember
6 learning about specific meetings in June of 2004?

7 A. Yes, yes.

8 Q. Tell me what specific meetings you recall
9 learning about.

10 A. Well, I can't tell you the exact dates, but
11 there were two meetings in June, I think early June,
12 and I read about both of them in the paper.

13 Q. Was one on June 7th and one on June 14th?

14 A. That sounds right.

15 Q. Now, tell us, if you can, what you can
16 remember learning from what you read in the newspaper
17 about the June 7th school board meeting.

18 A. The June 7th school board meeting, what I
19 can remember reading is that a former school board
20 member, Barrie Callahan, had approached the board
21 questioning why the students still did not have an
22 adopted biology text for the ninth-grade biology
23 course. Apparently there had been money allocated for
24 that in a previous budget, and at this point there
25 still had been no textbook approved. It seemed as if

1 there was a textbook that was -- the teachers wanted
2 approved, the dragonfly book. She was questioning why
3 they didn't have a textbook at that point.

4 Also, from that then my understanding is
5 that Board Member Buckingham said that he was
6 seeking -- well, that the book was laced with
7 Darwinism, that he wanted to see some equal treatment
8 of creationism along with evolution. Board Member
9 Bonsell said that there were only two theories, and
10 one was evolution, one was creationism.

11 Board Member Buckingham said that the
12 separation of church and state was a myth. And I also
13 believe that that was the meeting that Max Pell spoke,
14 a student, and he addressed the board just saying
15 that, you know, evolution is the only thing that they
16 should be teaching, that teaching creationism could
17 cause them problems.

18 Q. I've handed you a notebook of materials.
19 Please open it to what's been marked as P44 and tell
20 us if you've ever seen it before.

21 A. Yes, I've seen this.

22 Q. When have you seen it before?

23 A. I would have seen this probably the day that
24 it was -- well, yeah, the day that it was printed.

25 Q. And have you read it more recently?

1 A. I went over many of these articles recently,
2 yes.

3 Q. So is this -- P44, this is an article from
4 the York Dispatch that was published on June the 8th
5 of 2004. Isn't that right?

6 A. That's correct.

7 Q. And it concerns a meeting of the school
8 board?

9 A. That's correct.

10 Q. And you read it at the time?

11 A. Yes.

12 Q. Now, I'd like to ask you to please take a
13 look at what's been marked as P45, and I'm going to
14 ask you the same question.

15 A. Okay.

16 Q. And have you had a chance to look at that
17 article?

18 A. Yes, I have.

19 Q. And had you read that before just now?

20 A. Yes.

21 Q. Did you read it at the time?

22 A. Yes, absolutely.

23 Q. And have you read it in preparation for your
24 testimony?

25 A. Yes, I did.

1 Q. And it's an article from the York Dispatch
2 on June 9th of 2004 that also deals with this board
3 meeting that was held on June the 7th of 2004. Isn't
4 that true?

5 A. That's correct.

6 Q. Now, I'd like you to please take a look at
7 what's been marked as P46. And I'm going to ask you
8 the same questions with respect to that article. Have
9 you had a chance to look at it?

10 A. Yes, I have.

11 Q. Did you read it at or around the time that
12 it came out?

13 A. Yes, I did.

14 Q. And that was at or around June the 9th of
15 2004?

16 A. Yes.

17 Q. And this P46, this is, in fact, an article
18 that you read at the time from the York Daily Record.
19 Isn't that correct?

20 A. That's correct.

21 Q. And just for the record, this one is by
22 Mr. Joseph Maldonado?

23 A. Yes, yes.

24 Q. And let's just go back and give credit where
25 credit is due. On P44, that was an article from Heidi

1 Bernhard-Bubb?

2 A. That's correct.

3 Q. And P45 was also an article by Heidi
4 Bernhard-Bubb. Correct?

5 A. That's correct.

6 Q. And then finally please take a look at
7 what's been marked as P47, and I'm going to ask you
8 the same questions. Have you had a chance to look at
9 that?

10 A. Yes, I have.

11 Q. That's an article dated June the 10th of
12 2004 from the York Daily Record?

13 A. That's correct.

14 Q. And the author is Joseph Maldonado?

15 A. Yes.

16 Q. And is this an article that you read at or
17 around the date of it, June the 10th of 2004?

18 A. Yes, I did.

19 Q. And you've reviewed it more recently?

20 A. That's correct.

21 Q. Now, let's turn now to the June 14th meeting
22 of the school board. You remember, as you stated
23 before, reading in the paper about this meeting.
24 Correct?

25 A. Yes, I did.

1 Q. Tell us what you can remember learning from
2 what you read in the newspaper about the meeting of
3 the school board held on June the 14th, 2004.

4 A. What I remember reading is that Board Member
5 Buckingham began -- or at the beginning of the meeting
6 apologized to the community, to the people at the
7 board meeting for his actions prior to that.

8 But then, again, I think the issues became
9 the textbook adoption laced with Darwinism. Again I
10 think he repeated the claim that separation was a
11 myth. And I think that was the meeting where he said
12 that someone died on a Cross for us 2000 years ago,
13 can't we do something for Him.

14 Q. Now, I'd like you to take a look at what's
15 been marked as Exhibit 53 in your notebook. Have you
16 had a chance to look at that?

17 A. Yes, I have.

18 Q. That is an article dated June the 15th of
19 2004 from the York Daily Record written by Joseph
20 Maldonado, isn't it?

21 A. That's correct.

22 Q. And did you read that at or around that
23 date?

24 A. Yes, I did.

25 Q. And you read it more recently in preparation

1 for your testimony?

2 A. Yes.

3 Q. And it deals with the June 14th meeting of
4 the school board?

5 A. Yes.

6 Q. And now, please, if you would, take a look
7 at what's been marked as P54.

8 A. Okay.

9 Q. That's an article from the York Dispatch
10 dated June the 15th, 2004, written by Heidi
11 Bernhard-Bubb. Isn't that correct?

12 A. That's correct.

13 Q. And it also deals with the subject of the
14 June 14th school board meeting?

15 A. Yes.

16 Q. And you read that article at or around that
17 date?

18 A. Yes, I did.

19 Q. And you read it again more recently to help
20 you prepare today?

21 A. Yes.

22 Q. Now, there was a meeting -- do you remember
23 reading about a meeting in July of 2004?

24 A. Yes.

25 Q. What do you remember reading about that?

1 A. The only thing I remember about that
2 meeting -- this gave me the impression that things
3 were going well with the textbook adoption -- was that
4 they had found a new edition of the dragonfly book,
5 that they were looking at a 2002 edition, they had
6 found a 2004 edition, and they were going to review
7 that further.

8 Q. And, again, you learned this from reading
9 this in the newspaper?

10 A. That's correct.

11 Q. And if you would, please take a moment to
12 look at what's been marked as P64 in your notebook.

13 A. Okay.

14 Q. Have you had a chance to review that?

15 A. Yes.

16 Q. That's an article dated July the 13th of
17 2004 from the York Dispatch written by Heidi
18 Bernhard-Bubb, isn't it?

19 A. That's correct.

20 Q. And it's reporting on a July meeting of the
21 Dover School Board?

22 A. Yes.

23 Q. And you read that at the time?

24 A. Yes, I did, yes.

25 Q. Now, did you learn about a meeting in August

1 of 2004?

2 A. Yes, I did.

3 Q. And tell us what you can remember -- and
4 again, you learned -- what you learned you learned
5 from the local newspapers?

6 A. That's correct.

7 Q. Tell us what you learned about this meeting
8 in August, 2004.

9 A. I believe that that meeting occurred early
10 in August, around August 4th, and at that time the
11 textbook was eventually approved. At first it was a
12 four-four vote. As I understand it, that's not enough
13 to have the book adopted. Board Member Angie Yingling
14 asked for a reconsideration vote and the re-vote was
15 five to three.

16 There was also some information there
17 regarding Board Member Buckingham saying that he
18 wouldn't allow -- or he didn't -- if he didn't get
19 what he wanted as far as the curriculum or a book was
20 concerned, that he didn't want to see this textbook
21 being adopted. I think they even used the word
22 "blackmail."

23 Q. And please take a moment to look at what's
24 been marked as P682. Have you had a chance to look at
25 that?

1 A. Yes, I have.

2 Q. And that's an article from the York Daily
3 Record dated August the 4th of 2004 written by Joseph
4 Maldonado. Isn't that correct?

5 A. That's correct.

6 Q. And you read that at the time?

7 A. Yes, I did.

8 Q. And that deals with this meeting of the
9 Dover School Board in early August?

10 A. Yes, it does.

11 Q. And if you would please turn to what's been
12 marked as P683. Take a moment to look at it. That's
13 a -- have you had a chance to look at that?

14 A. Yes, I have.

15 Q. That's an article dated August the 3rd, 2004
16 from the York Dispatch written by Heidi Bernhard-Bubb.
17 Isn't that correct?

18 A. That's correct.

19 Q. And that also deals with this early August,
20 2004 meeting of the school board. Correct?

21 A. Yes.

22 Q. And, again, you read -- this is another
23 article that you read at the time?

24 A. Absolutely, yes.

25 Q. Now, did you learn about a board meeting in

1 early September?

2 A. Yes, there were two board meetings in
3 September.

4 Q. What do you remember reading about the first
5 school board --

6 A. This would have been the first time that it
7 came to my attention that they were considering
8 bringing in a supplemental textbook, the *Pandas*
9 textbook. And it seemed to me that that was their
10 answer to the dragonfly book, getting their equal
11 balance.

12 I think the problem was, number one, using
13 taxpayer money, they would have to go through the
14 adoption process. They were trying to figure a way of
15 getting the book in and also a way of getting it into
16 the curriculum.

17 Q. Please take a moment to look at what's been
18 marked as P679. Have you had a chance to look at
19 that?

20 A. Yes, I have.

21 Q. That's an article dated September the 8th of
22 2004 from the York Daily Record by Lauri Lebo. Isn't
23 that correct?

24 A. That's correct.

25 Q. And that concerns a school board meeting

1 that was held just prior to that date?

2 A. Yes.

3 Q. And you read that at the time?

4 A. Yes, I did.

5 Q. And then if you would, please, look at
6 what's been marked as P684.

7 A. Okay.

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

9 A. Sure.

10 Q. And that's an article dated September the
11 8th, 2004, from the York Dispatch written by Heidi
12 Bernhard-Bubb dealing with that same school board
13 meeting in early September, 2004?

14 A. Yes, it is.

15 Q. And you read that at the time?

16 A. Yes, I did.

17 Q. Now, do you remember learning about a second
18 meeting in September of 2004?

19 A. There was a second meeting in September.
20 There wasn't a whole heck of a lot reported on that.
21 Now, I did go on the board's site, and it looks like
22 it was just a meeting, probably a business meeting
23 that lasted 45 minutes. And I really didn't learn
24 anything regarding this controversy.

25 Q. Did you read about any board meetings in

1 October of 2004?

2 A. There were two board meetings in October. I
3 think October 4th might have been the first one.

4 Q. What do you recall learning from reading the
5 newspaper about the October 4th, 2004 board meeting?

6 A. That was when it was announced that there
7 had been an anonymous donation of 60 copies of *Pandas*
8 *and People* and that that book would be used as a
9 supplemental text within the classroom. Because it
10 was not -- didn't go through the formal adoption
11 process, it did not require board approval. They just
12 were basically going to put it in the classroom.

13 The other thing that I remember there is I
14 think that at that point Dr. Nilsen was questioned as
15 to whether or not the teachers would be teaching
16 intelligent design or instructed to teach intelligent
17 design, and I think his answer was that they weren't
18 going to be instructed to teach intelligent design,
19 but that if they did, that would be okay. I'm not
20 sure exactly how the phrase went.

21 Q. Please take a moment to look at what's been
22 marked as P685.

23 THE COURT: While he's doing that,
24 Mr. Harvey, by no means do I want to hurry you through
25 this. If you think that you can finish your direct by

1 going a little past 4:30, we can do that. Otherwise,
2 wherever you want to -- if you've got measurably more,
3 I would say anytime you want to find an appropriate
4 break point, we can do that and pick up with this
5 witness on Friday. Your call.

6 MR. HARVEY: Thank you, Your Honor. Let me
7 just confer with them.

8 My co-counsel reminds me that we're going to
9 have an expert testifying on Friday morning and that
10 we want to make sure that we have plenty of time for
11 his cross-examination so that he can leave that day,
12 so we'd like to press on as long as the Court would
13 permit us to press. If we could go to quarter of
14 5:00 --

15 THE COURT: I don't have a problem with
16 that. Defense counsel have any problem?

17 MR. GILLEN: We'll hang in there, Your
18 Honor. The cross, I imagine, would be very short
19 anyway.

20 THE COURT: Well, let's do the best we can.
21 We'll go until 4:45, in any event. We'll see how far
22 we get.

23 BY MR. HARVEY:

24 Q. Have you had a chance to look at what's been
25 marked as P685?

1 A. Yes, yes.

2 Q. And that is an article that was in the York
3 Daily Record Sunday News on October the 5th of 2004
4 written by Joseph Maldonado, isn't it?

5 A. That's correct.

6 Q. And you read it at the time?

7 A. Yes, I did.

8 Q. And that was the source of your information
9 for the meeting on October the 4th?

10 A. That's correct.

11 Q. Now, you said that there were two meetings
12 in October. Do you recall the meeting -- that there
13 was a meeting on October the 18th?

14 A. Yes, October the 18th was where the board
15 adopted the curriculum change to the ninth-grade
16 biology in the area -- well, the gaps and problems and
17 added intelligent design to their curriculum.

18 Q. And, again, this is something you learned
19 just from reading the paper?

20 A. Yes.

21 Q. Please take a moment to look at what's been
22 marked as P678.

23 A. Okay.

24 Q. You've had a chance to look at that?

25 A. Yes, I have.

1 Q. And P678 is an article that was written by
2 Joseph Maldonado in the York Daily Record Sunday News
3 on October the 19th of 2004, isn't it?

4 A. Yes.

5 Q. And you read that at the time?

6 A. Yes, I did.

7 Q. And that was the source for your information
8 about the -- what happened at the October 18th
9 meeting?

10 A. That's correct.

11 Q. And if you would also please look at P686.

12 A. Okay.

13 Q. That's another article by Mr. Maldonado,
14 except this one is dated October the 20th, 2004, and
15 this one also says it's from the York Daily Record
16 Sunday News. Isn't that correct?

17 A. That's correct.

18 Q. And it's a different article reporting on
19 the same meeting?

20 A. That's correct.

21 Q. And you read that at the time?

22 A. Yes, I did.

23 Q. Now, do you remember -- I don't want you to
24 look at the article. You can close your book for a
25 second. Do you remember reading about or learning

1 about comments that Board Member Heather Geesey made
2 at that meeting on October the 18th?

3 A. I'm not sure if it was the October the 18th
4 meeting, but I know that there was a question
5 regarding whether or not -- I actually thought it was
6 the next meeting, but whether, if the teachers sought
7 to have legal counsel, Stock and Leader, the school
8 board's lawyers, would they, in case the teachers got
9 sued for teaching this, would they defend them. And
10 Heather Geesey at that point said if they would ask
11 for that, if they'd ask for help from Stock and
12 Leader, they should be fired.

13 Q. "They" you mean the teachers?

14 A. Teachers.

15 Q. And, again, this is just what you read in
16 the paper?

17 A. Yes. That one, being a teacher, stood out.

18 Q. Now, did you learn about a board meeting in
19 early November?

20 A. Yes.

21 Q. And tell us what you can remember learning
22 about that meeting.

23 A. Well, what I remember there is that Noel
24 Weinrich, who was -- I believe at that point in time
25 he had resigned from the board and his resignation was

1 effective. He was upset. He was concerned about who
2 was going to -- if the school district got sued, who
3 is going to cover his bills, you know, legal bills if
4 he had any. And also he was, I think, upset because I
5 think he had been -- he felt he had been assured by
6 Dr. Nilsen that we were not going to be teaching --
7 that the district was not going to be teaching
8 intelligent design.

9 Q. And do you remember learning anything about
10 tapes that had been made of the board meeting?

11 A. Okay, the tapes. Apparently the board tapes
12 their meetings for use when they go back and try to
13 put their minutes together. And there were people
14 requesting the minutes from the October 18th meeting.
15 Those tapes were denied to them.

16 There was some question about what the whole
17 policy was regarding these tapes. I believe that
18 Board Member Bonsell said that once the minutes had
19 been typed and approved at the next board meeting,
20 that these tapes were destroyed.

21 And I believe that they also said under the
22 advice of their solicitor that -- because they were --
23 there was the chance that they would be sued in the
24 future because of what had happened at the
25 October 18th meeting, that they were told that they

1 should be destroyed, or at least not turn them over to
2 the public.

3 Q. Please take a moment to look at what's been
4 marked as P669.

5 A. Okay.

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

7 A. Yes, I have.

8 Q. That's another article by the ever-present
9 Mr. Joseph Maldonado, isn't it?

10 A. Yes.

11 Q. And it's dated November the 2nd, 2004, and
12 it's for the York Daily Record Sunday News. Is that
13 right?

14 A. If we're looking at -- which number, 669?

15 Q. Yes.

16 A. 669 is dated November 2nd, 2004. I thought
17 you said November 4th.

18 Q. I'm sorry if I misspoke.

19 A. Okay.

20 Q. So it's an article dated November the 2nd of
21 2004 for the York Daily Record Sunday News by
22 Mr. Maldonado?

23 A. Correct.

24 Q. And it's reporting on the school board
25 meeting that was held actually on November the 1st?

1 A. Right.

2 Q. And you read this at the time?

3 A. Yes, I did.

4 Q. And if you would also please look at what's
5 been marked as P687. And that's another article you
6 read at the time?

7 A. Yes, I definitely did.

8 Q. And that's by Heidi Bernhard-Bubb, and it's
9 dated November the 2nd, 2004, from the York Dispatch.
10 Isn't that correct?

11 A. That's correct.

12 Q. And it's also reporting on the November 1st
13 meeting?

14 A. Yes, it is.

15 Q. Now, in addition to reading all these
16 newspaper articles that we've just looked at, did you
17 review material on the Dover School Board Web site?

18 A. Yes, I did.

19 Q. Please take a moment to look at what's been
20 marked as P104. What is P104?

21 A. P104 was the -- they call it the board press
22 release. My question all along had been, now we have
23 this curriculum, how are they going to implement it.
24 And I believe this is their policy that they're
25 telling the public how they're going to implement

1 this. They're going to read a statement. This
2 appeared on the Web site on Friday, November 19th.

3 Q. And did you read it on or around that date?

4 A. That day.

5 Q. And what was your reaction to it?

6 A. All along I thought this would just go away.

7 I don't know how -- that's the only thing I can say.

8 And, you know, as a teacher, there are things in the

9 curriculum, you try to cover them. The question is

10 how they're going to be implemented. This showed me

11 how this curriculum was going to -- that it was going

12 to be implemented, how it was going to be implemented.

13 And this, I would have to say, was the thing that put

14 me over the edge.

15 Q. And did you do anything after reading this?

16 A. I called the ACLU the following Monday.

17 Q. Did you contact Paula Knudsen from the ACLU?

18 A. Well, what I did is, I really -- you know, I

19 had heard the ACLU being bantered around in the

20 newspapers at that point in time. I called -- I

21 believe they have a hotline in Philadelphia. And I

22 called that, and I just basically said I'm a parent

23 who has a student in Dover School District, and I feel

24 right now that possibly some of my rights and my

25 daughter's rights might be being violated. I was

1 looking for somewhere to turn. And that was
2 basically -- you know, with contact information, that
3 was what I did that day.

4 Q. Now, after reading these articles and
5 reading this -- what was posted on the Web site, did
6 you begin to attend school board meetings?

7 A. I did not -- well, yes, because the next
8 school board meeting would have been December 1st.
9 Yes, I did.

10 Q. And that was your first school board
11 meeting?

12 A. Yes, it was.

13 Q. And it was because of these issues that you
14 attended that meeting?

15 A. Yes. I felt it was time to get involved.

16 Q. Now, I'd like you to take a look at what's
17 been marked as P127. We've looked at this in court
18 several times. Do you recognize it as the newsletter
19 that was published in February of 2005 by the school
20 board?

21 A. Yes, I do.

22 Q. And were you ever at a school board meeting
23 where this was discussed prior to it being published?

24 A. I wouldn't say it was discussed.

25 Q. Tell us what you can remember being

1 mentioned about it.

2 A. Much to my wife's chagrin, I went to the
3 school board meeting on February 14th, Valentine's
4 Day. And it was not on the agenda. You're able to
5 pull up the agenda to the school board meetings on
6 their Web site, and it was not on that agenda.

7 Additionally, they also publish agendas and have those
8 there for you to pick up at the meeting. There was
9 nothing on there regarding the approval of this
10 newsletter.

11 There's a section in -- when they work
12 through their agenda, and I'm not sure exactly what
13 it's called, but it's president's message or
14 president's communications. And at that time Board
15 Member Eric Riedel made a motion to send out a
16 district newsletter in addition to the one they were
17 already sending out regarding the biology curriculum
18 update. It was seconded by Board Member Buckingham,
19 and it passed seven-zero. There are nine members on
20 the school board. Two were absent.

21 Q. Was there any discussion among the board
22 about it?

23 A. No. This went quick.

24 Q. Now, after that, did you receive this -- as
25 a result of that, did you receive this newsletter?

1 A. Yes.

2 Q. And can you tell us whether -- did you read
3 it at the time?

4 A. Yes.

5 Q. Now, I'd like you to tell us, what was your
6 reaction as a schoolteacher -- and I'm going to take
7 you through parts of it. There are some frequently
8 asked questions, and I'd like you to look at the first
9 frequently asked question and tell us what was your
10 reaction as a schoolteacher to that statement.

11 A. A small minority of parents. I don't care
12 if it's one parent objecting to this, but the group of
13 folks that I'm involved with are plaintiffs. We were
14 being put into this small group that was making
15 problems and trouble for the school district.

16 Q. And take a look at the second frequently
17 asked question. Did you have a reaction to that
18 statement there?

19 A. I would completely disagree with this. In
20 my opinion, intelligent design is religion in
21 disguise. I use the word "camouflage."

22 Q. And that was your reaction at the time?

23 A. Oh, yes.

24 Q. Now, take a look at -- it says that it
25 involves science versus science. Did you have a

1 reaction to that at the time?

2 A. Well, it's not science. I mean, intelligent
3 design is not science. We've heard the experts here.
4 It's not science. It doesn't reach the level of
5 science.

6 Q. Please take a look at the next frequently
7 asked question when it asks about what is the theory
8 of evolution, and I'd like to know if you had a
9 reaction to that at the time.

10 A. I sure did. Am I allowed to read this?

11 Q. Sure.

12 A. (Reading:) The word "evolution" has several
13 meanings, and those supporting Darwin's theory of
14 evolution use that confusion in definition to their
15 advantage. So we're going to put evolution over on
16 people, we're going to employ double-talk. We say one
17 thing, we say another thing. That's not what
18 scientists do.

19 Q. So you understood the school board to say
20 that science teachers engage in double-talk when they
21 talk about evolution?

22 A. Yes.

23 Q. Please take a moment to look at the next
24 frequently asked question, the one that says, What is
25 the theory of intelligent design?

1 A. Right, right, I was just looking it over.
2 My problem is, again, it recognizes an intelligent
3 designer, an intelligent cause. Again, it doesn't
4 reach the level of science.

5 Q. And that was your reaction at the time?

6 A. Yes.

7 Q. And please take a look at the next
8 frequently asked question. Well, actually, within
9 that, what we were just looking at, it says, In simple
10 terms, on a molecular level, scientists have
11 discovered a purposeful arrangement of parts which
12 cannot be explained by Darwin's theory. Did you have
13 a reaction to that statement at the time?

14 A. Well, the word "purposeful." Again, I think
15 we're going back to the whole concept of design and
16 then someone had a purpose and that would be God.

17 Q. The next frequently asked question says, Are
18 Dover students taught the theory of intelligent
19 design? And there's a response there. Do you see
20 that?

21 A. This is the great one-minute statement.
22 We're making a one-minute statement, but we're not
23 teaching. I've been teaching for 29 years.
24 Everything that I say in that classroom is teaching.
25 I carry a fair amount of authority and credibility

1 within that.

2 If I say that one NFL football -- and I'm
3 trying to avoid sports analogies here. But if I say
4 one NFL football team is better than another, I'm
5 going to tell you that 80 percent of my kids are going
6 to go back to their parents and say, this is what
7 Mr. Stough said, and this is how it is. I don't care
8 if it's a minute, I don't care if it's ten seconds,
9 it's teaching.

10 Q. And then there's another frequently asked
11 question that said, Are there religious implications
12 to the theory of ID? And there's a response. Can you
13 tell us if you had a reaction to that question and
14 response at the time?

15 A. No more so than religious implications of
16 Darwin's theory. There are no religious implications
17 of the theory of evolution. They like to characterize
18 evolution as being dogmatic, as being a religion.
19 It's not. And so, again, they're just saying this
20 is -- you know, evolution is a religion, too. It's
21 not.

22 Q. And then, finally, under the right-hand
23 corner there's something that says, quotables, and
24 then there's a quotation from somebody named Anthony
25 Flew, and it refers to him as a world-famous atheist.

1 Do you recall having a reaction to that quotation from
2 Mr. Flew at the time?

3 A. Sure.

4 Q. Please tell us what was your reaction.

5 A. Well, what they're doing -- from what I
6 understand the story with Anthony Flew is, he was an
7 atheist, and they equate that point in time of his
8 life with his, you know, adhering to or accepting the
9 theory of evolution.

10 Then he moved towards the intelligent design
11 concept and at the same time was finding religion, was
12 no longer an atheist. There are a lot of messages
13 there. Atheism is bad. Religion is good. And, you
14 know, I had to laugh at how many people want to be
15 world-famous atheists.

16 MR. HARVEY: Your Honor, that's all the
17 questions I have on that exhibit, but I do have a few
18 other exhibits, and we're surely not going to get it
19 done in the next few minutes.

20 THE COURT: So you want to continue your
21 direct?

22 MR. HARVEY: Yes, Your Honor.

23 THE COURT: All right. And certainly we're
24 not going to get cross in today, so we'll adjourn for
25 the day. We'll be in recess until Friday morning at

1 9:00 a.m. Now, you have an expert who is going to
2 follow this witness. Is that correct?

3 MR. HARVEY: Yes, Your Honor.

4 THE COURT: Do you think that's going to
5 take the rest of the day on Friday?

6 MR. HARVEY: I believe so.

7 THE COURT: Do we need to start a little
8 earlier on Friday to get that in?

9 MR. HARVEY: Happy to do so.

10 THE COURT: If you don't think we do --

11 MR. ROTHSCHILD: I think it's a good idea to
12 be safe.

13 THE COURT: Why don't we start at 8:45 just
14 to be safe and give you a little extra time. And
15 certainly I'd give the defendants the same courtesy
16 during your case-in-chief. I just want to keep this
17 moving. That will give us a little bit of a cushion
18 at the outset so we don't get lost on this witness on
19 Friday morning.

20 So we will reconvene at 8:45. That will be
21 our starting time on Friday morning, and we'll go as
22 long as we have to. I would rather not go beyond
23 4:30, actually, on Friday. We have a full week. I
24 think we're in session every day or parts of every day
25 next week, so we'll try to wrap it up at least by

1 4:30. But that will give us a cushion if we start at
2 8:45. So we'll recess until 8:45 on Friday. Wish you
3 all a pleasant good evening. We'll see you then.

4 MR. HARVEY: Thank you, Your Honor.

5 (Whereupon, the proceedings were adjourned.)
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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this copy is a correct transcript of the same.

Dated in Harrisburg, Pennsylvania, this 12th day of October, 2005.

/s/ Lori A. Shuey
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