

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

TAMMY KITZMILLER, et al.,

Plaintiffs

vs.

DOVER AREA SCHOOL DISTRICT,
et al.,

Defendants

CIVIL ACTION NO. 04-CV-2688

(JUDGE JONES)

Deposition of : DEBORAH FENIMORE
Taken by : Defendants
Date : March 29, 2005, 1:30 p.m.
Before : Vicki L. Fox, RMR,
Reporter-Notary
Place : 200 One Keystone Plaza
North Front and Market Streets
Harrisburg, Pennsylvania

APPEARANCES:

PEPPER HAMILTON, LLP
BY: CHRISTOPHER J. LOWE, ESQUIRE

For - Plaintiffs

THOMAS MORE LAW CENTER
BY: PATRICK T. GILLEN, ESQUIRE

For - Defendants

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I N D E X

WITNESS

DEBORAH FENIMORE

Examination

By Mr. Gillen

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EXHIBITS

(None marked.)

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STIPULATION

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

DEBORAH FENIMORE, called as a witness, being duly sworn, was examined and testified, as follows:

BY MR. GILLEN:

Q. Good afternoon.

A. Hi.

Q. My name is Patrick Gillen. I know we have met off the record.

A. Yes.

Q. Would you please give your full name to the court reporter.

A. Deborah Frances Fenimore.

Q. How would you prefer that I address you during the deposition?

A. Deb.

Q. Deb is fine. Deb, I know we met before, and you know why you are here. It is your deposition. It is a simple process. I get to learn your side of the story,

1 why you are here, why you are a plaintiff in this
2 action.

3 I will say it just for the record. I am the
4 attorney representing the School District in connection
5 with this litigation. I just want to ask you some
6 questions about what you know about the story that
7 provides the basis for this lawsuit.

8 There's a few conventions to the deposition
9 process. The chief of which is that all your answers
10 have to be verbal. They can't be gestures and so on.
11 If my questions are unclear, and you don't know what I
12 am getting at, just ask me, and I will try to make them
13 more precise. It happens all the time.

14 By the same token if I am not understanding your
15 answer, please bear with me as I try to get a better
16 sense for the basis for your position. If at any point
17 in the deposition you feel uncomfortable with the
18 question I have asked, please let me know.

19 If you want to break and talk to your attorney,
20 please let me know. You can do that. It is not an
21 endurance contest. If you want to break to use the
22 facilities or get a drink of water or anything, please
23 let me know.

24 Just by way of general background, I spoke with
25 Joel this morning so I think I know a little bit about

1 your situation. Would you give me your current address?

2 A. 1691 Park Street, Dover, Pennsylvania 17315.

3 Q. And your current place of employment?

4 A. Youth Advocate Programs, Incorporated.

5 Q. Is that a public entity or private?

6 A. Public.

7 Q. Who is your employer?

8 A. Youth Advocate. It would be private. Sorry. We are
9 funded through the state.

10 Q. What does Youth Advocate do?

11 A. We provide services for children at risk. We provide
12 behavioral specialists, mobile therapists and
13 therapeutic staff support personnel.

14 Q. Give me a sense of your educational background.

15 A. Some college, nursing degree.

16 Q. High school I take it then?

17 A. Yes.

18 Q. Where did you graduate from high school?

19 A. Notre Dame in Moylan, Pennsylvania outside of
20 Philadelphia.

21 Q. I graduated from Notre Dame in South Bend.

22 A. Is that why you gave me that look?

23 Q. No problem.

24 MR. LOWE: Nice high school program there as well.

25 BY MR. GILLEN:

1 Q. Notre Dame High School, and then you went to college?

2 A. I went to nursing school through Aston Vo-Tech.

3 Q. Any other post secondary education?

4 A. No.

5 Q. Obviously scientific subject matter has something to do
6 with this dispute. Give me a sense of your background
7 in science.

8 A. Other than what I have learned through nursing school or
9 in high school itself, it's just what I have read.

10 Q. General --

11 A. General.

12 Q. General educational background. Let me again to be a
13 little more precise with respect to biology, do you have
14 any post secondary course work in biology?

15 A. No.

16 Q. As we sit here today, are you on any medication that
17 impairs your ability to perceive and respond to my
18 questions?

19 A. No.

20 Q. Do you have any handicap that impairs your ability to
21 perceive and respond to my questions?

22 A. No.

23 Q. For the period roughly January of 2003 to the present,
24 have you been on any medications that would impair your
25 ability to perceive?

1 A. No.

2 Q. Any handicap that might impair your ability to perceive
3 and recall since January of 2003?

4 A. No.

5 Q. I think I know from Joel, but I just want to get a sense
6 for the family situation. Am I correct you and Joel,
7 you live together?

8 A. Yes.

9 Q. You have a child together Ian?

10 A. Yes.

11 Q. Ian is in the seventh grade?

12 A. Yes.

13 Q. It is Ian that -- and don't let me put words in your
14 mouth -- that sort of provides the basis for your claim
15 in this lawsuit?

16 A. Yes.

17 Q. Is there any other child or any other basis for your
18 claims in this lawsuit?

19 A. My own beliefs and the beliefs for other children.

20 Q. I understand that. Now well, let's go into that just
21 briefly to make sure I do understand you.

22 Your beliefs apart from your relationship with
23 Ian, is there any other aspect of the Dover Area
24 curriculum policy that affects you? In other words, how
25 else does it affect you as you see it, or does it?

1 A. I personally, no. But for the future generation of all
2 of the children that are being educated today, yes.

3 Q. Just briefly, give me an understanding of that concern.

4 A. I went through Notre Dame. A nun taught me biology.
5 And that's where I learned evolution to begin with.
6 Even as a Catholic school, it is kept separate. I fully
7 believe that it should be kept separate.

8 I believe what the state says. I believe that all
9 children have the right to an education, and I do not
10 believe that ID gives the full educational value that
11 all children could benefit from.

12 Q. Okay. And I will ask you some questions about that
13 later, but right now, I am focused on sort of the impact
14 of Dover Area's policy on you.

15 I understand that part of the concern is for Ian,
16 Ian will be subject to that?

17 A. Yes.

18 Q. And I understand you now, that you also have a sort of
19 civic mindedness which has led you to step forward for
20 what you see as an inappropriate curriculum change.

21 In terms of the impact of that policy on you,
22 apart from your son Ian, which has direct impact, is
23 there any other way you see yourself affected by that
24 curriculum change?

25 A. Emotionally for other children that are being taught. I

1 go back to that again.

2 Q. Okay. Apart from those things you have described,
3 anything else?

4 A. No.

5 Q. I think I know the answer to these questions. Let me
6 just ask for the record. I see that you are represented
7 by counsel today. I just want to get a sense for how
8 you came to be represented.

9 How is it that you came to be represented by
10 counsel with respect to this litigation?

11 A. Paula Knudsen had called I believe it was some time in
12 December and had informed us of the change in policy at
13 Dover, and also had informed us that a lawsuit was in
14 the works, more or less being talked about, and asked if
15 I would be interested in participating.

16 Q. Okay.

17 A. And I said yes.

18 Q. Did she say why she called you?

19 A. She had said that other families from the Dover Area had
20 contacted the ACLU and wanted to start litigation
21 against the curriculum as they had wanted to teach it.

22 Q. Sure. Did Paula give a reason for contacting you
23 specifically?

24 A. She had said -- I asked her. She didn't give a reason
25 in the beginning at all other than what I have just told

1 you. Then I asked her how she had gotten our names to
2 contact because I didn't believe that the school would
3 just hand them a list of all of the students and
4 families in the District. And that was through Jeff and
5 Casey Brown, Carol.

6 Q. Prior to your discussion with Ms. Knudsen, had you
7 consulted with any other attorney about the curriculum
8 change?

9 A. No.

10 Q. And the possible legal action?

11 A. No. And that is simply because this is my son's first
12 year in Dover.

13 Q. I believe you executed a retainer agreement?

14 A. Yes.

15 Q. Is that true?

16 A. Yes.

17 Q. Just to be clear -- and Chris probably told you this
18 already -- but for the purposes of this deposition, I
19 will ask you questions about did you communicate with
20 anyone about this, that or the other. Always understood
21 to be excluded from that questioning is any effort to
22 pry into communications between you and your attorney or
23 you, your attorney and other clients.

24 Apart from that, please tell me if you have spoken
25 with people. But to the extent you have consulted with

1 counsel, you have been in the presence of counsel and
2 consulted with them or consulted with clients about
3 legal advice, that is all confidential. So please
4 understand that just for the record.

5 A. Understood.

6 Q. In preparing today, I want to ask you: Did you speak
7 with anyone prior to coming here for your deposition?

8 A. Other than Joel, no.

9 Q. You just spoke with Joel about the deposition?

10 A. Wondering what type of questions would be asked,
11 wondering honestly what you were looking for.

12 Q. Did you speak with anyone else in preparation for the
13 deposition?

14 A. We consulted briefly Wednesday evening.

15 Q. And you are indicating your attorney who is seated here
16 with you today?

17 A. Yes.

18 Q. Did you review any documents in preparation for coming
19 here to the deposition?

20 A. Wednesday, yes.

21 Q. Were they your documents?

22 A. I forget the name of it.

23 MR. LOWE: Could I just interject here? By your
24 documents, are you referring to the interrogatory that
25 she responded to?

1 MR. GILLEN: Yes.

2 MR. LOWE: And also the complaint perhaps.

3 A. Yes.

4 BY MR. GILLEN:

5 Q. That is fine. Apart from looking at those documents,
6 did you look at anything else by way of preparation for
7 today's deposition?

8 A. Was that newspaper articles that were included in the
9 folder?

10 MR. LOWE: The York press articles?

11 A. Yes.

12 MR. LOWE: Did you look at any of those articles?

13 A. Not really. They were in the folder. They are still in
14 there. Did I read them? No.

15 BY MR. GILLEN:

16 Q. How about e-mails, did you review any e-mails?

17 A. No.

18 Q. Any records like that?

19 A. No.

20 Q. The next series of questions I think I know the answer
21 to. I just want to go through it really quickly. I am
22 looking to see if you have relationships with people who
23 are sort of characters in this story here.

24 If we look at people who have been on the Dover
25 Area School District Board since January of 2003, do you

1 have any relationship by blood or marriage to any School
2 Board members?

3 A. No.

4 Q. Just to make sure I understand, it is my understanding
5 Joel has a relationship with the Browns?

6 A. Correct.

7 Q. Apart from that, you are aware of no connection
8 whatsoever?

9 A. Correct.

10 Q. How about friendship, business dealings, anything of
11 that nature, shared memberships in organizations?

12 A. No.

13 Q. With any of the School Board members since?

14 A. No. No relationships, whatsoever.

15 Q. Same questions for the administration, the
16 Superintendent, Assistant Superintendent, Principal,
17 Vice Principal, those people who are part of the
18 administration of Dover Area School District, do you
19 have any relationships by blood or marriage to those?

20 A. No.

21 Q. Any friendships, business dealings, shared memberships
22 in civic or community organizations?

23 A. No.

24 Q. One last step broader. If we look at employes of the
25 Dover Area School District insofar as you know who are

1 employes and do you have any relations by blood or
2 marriage with employes of Dover Area School District?

3 A. No.

4 Q. How about business dealings, friendships, shared
5 memberships in civic or community organizations?

6 A. No.

7 Q. The next series of questions, I just want to see if you
8 have got a relationship with the other plaintiffs apart
9 from your shared status as plaintiffs in this
10 litigation.

11 Do you have any connections with Barrie Callahan
12 apart from this litigation?

13 A. No.

14 Q. Have you ever discussed this litigation with Barrie
15 Callahan?

16 A. No. Not one on one.

17 Q. You say not one on one, apparently referring to
18 discussions in a group?

19 A. Yes.

20 Q. Was that a meeting with attorneys?

21 A. Yes.

22 Q. And clients?

23 A. Yes.

24 Q. How about Fred Callahan, have you had any conversations
25 with him?

1 A. No.

2 Q. Again, apart from these consultations with attorneys.

3 How about Tammy Kitzmiller?

4 A. No.

5 Q. Bryan Rehm?

6 A. No.

7 Q. Christy Rehm?

8 A. No.

9 Q. Joel Leib?

10 A. Yes.

11 Q. Steven Stough?

12 A. No.

13 Q. Beth Eveland?

14 A. No.

15 Q. Cynthia Sneath?

16 A. One conversation.

17 Q. When was that?

18 A. Oh, goodness. Two months ago.

19 Q. After the litigation was filed?

20 A. Yes.

21 Q. Was it with your attorneys or just the two of you?

22 A. By phone.

23 Q. What did you discuss?

24 MR. LOWE: Can I interject. Make sure if you were
25 discussing things that we had discussed with you, things

1 that -- trial strategy, things we were planning, that is
2 not part of this.

3 MR. GILLEN: Right.

4 MR. LOWE: If you guy shares your own personal
5 ideas.

6 A. And that is what we did share, our personal ideas of how
7 we felt what our beliefs were, from hearsay on my side,
8 from actual witnessing on her side, what we thought of
9 the Board.

10 BY MR. GILLEN:

11 Q. Okay. And that is all I am -- really today is about me
12 trying to get a sense for what each person knows. And
13 what did Cynthia say to you during that conversation
14 based on her observation of the Board?

15 A. That they were idiots.

16 Q. Did she give you a specific basis for that opinion? Did
17 she recount specific instances?

18 A. I don't think she recounted any specific incident that
19 had happened. We were talking in general. And I can't
20 even remember specifically when I would say something
21 that I had heard, exactly what her answer was.

22 Q. I understand that. Obviously, I mean she has got a
23 complaint about the Board, and I understand that. She
24 has a low estimation of at least some of the Board's
25 members.

1 Did she limit her comments to particular members
2 or a particular Board member?

3 A. One of the B's.

4 MR. LOWE: That seems to be a theme today.

5 BY MR. GILLEN:

6 Q. When you say one of the B's, Bill Buckingham or Alan
7 Bonsell?

8 A. Right. And that was with Harmony Grove's Church and the
9 prayer list that they have going for the School Board
10 members.

11 Q. When she brought up Harmony Grove Church, do you know
12 whether she attends there?

13 A. No.

14 Q. What did she say? I am just trying to get a sense for
15 what...

16 A. I probably started that part of the conversation myself
17 in recanting what I had been told. And that was that if
18 you were a member of that church, basically you were
19 going straight to hell.

20 And she recanted by coming -- or came back with
21 about the prayer list.

22 Q. I see that you are anticipating a further question about
23 that comment. Joel mentioned that this morning. I just
24 want to get a sense for how you came to understand that
25 someone had made a comment to this effect.

- 1 Was it your understanding a Board member had made
2 that comment?
- 3 A. Yes.
- 4 Q. Do you remember which one?
- 5 A. I can't say whether it was Buckingham or Bonsell, which
6 one had made the comment.
- 7 Q. In this morning's deposition, Joel mentioned a comment
8 to that effect being made in a meeting with Jeff and
9 Casey Brown in the fall of 2004?
- 10 A. Correct.
- 11 Q. I will ask you about that later. Let me just see what I
12 can learn about this phone conversation. Apart from
13 what you have recounted thus far, do you remember
14 anything else about what Cynthia Sneath said during the
15 conversation about --
- 16 A. I really don't. Not at this point.
- 17 Q. Anything else about the prayer list? What was the
18 purpose of the prayer list?
- 19 A. That the Church was backing the Board members.
- 20 Q. Did she say anything else about Harmony Grove Church?
- 21 A. No, not that I remember or recall at this point.
- 22 Q. You say this telephone conversation was about two months
23 ago?
- 24 A. Yeah.
- 25 Q. Apart from that conversation with Cynthia Sneath, have

1 you had any other conversations with her about the
2 subject matter of this litigation?

3 A. No.

4 Q. How about Julie Smith?

5 A. No.

6 Q. From your interrogatory answers, I have an impression
7 that the first Board meeting you attended was in
8 February of 2005; is that accurate?

9 A. That's correct.

10 Q. Let me ask you: Have you had any conversations
11 personally with any members of the Dover Area School
12 District Board?

13 A. Concerning this?

14 Q. Just concerning anything generally.

15 A. One conversation with Angie Yingling on the phone, and I
16 didn't even know who she was until after I was off the
17 phone. And that was in regards to a house rental.

18 Q. Now I understand better why you asked me the subject
19 matter of the discussion. Apart from that, that is it?

20 A. That's it.

21 Q. How about former members like Jane Cleaver or Noel
22 Wenrich?

23 A. No.

24 Q. How about conversations with teachers at Dover Area High
25 School, have you had any conversations with them?

- 1 A. Not concerning this.
- 2 Q. Any conversations about anything? Have you had occasion
3 to deal with them over the years?
- 4 A. As I said, this is Ian's first year at Dover. My next
5 two children up went to Red Lion, and my oldest son
6 graduated from York Catholic.
- 7 Q. To date, you haven't spoken with any --
- 8 A. Just in regard to Ian.
- 9 Q. Let me just ask. I think I know the answer. Have you
10 spoken with Bert Spahr?
- 11 A. No. She is high school I believe.
- 12 Q. Perhaps my question was imprecise. I am concerned with
13 teachers at the Dover Area High School.
- 14 A. No.
- 15 Q. Reporters have played a big part in this story so far.
16 Let me ask you: Have you ever spoken with Joe Maldonado
17 about the biology textbook, biology curriculum in this
18 litigation prior to the filing of the lawsuit?
- 19 A. Prior to, no.
- 20 Q. Subsequently to the filing?
- 21 A. One reporter from the "York Daily Record". And for the
22 life of me, I cannot pull his name. Yet my name has
23 been in the newspaper connected with other reporters
24 that I have never spoken with.
- 25 Q. Can you give me some examples of that or about how many

1 times that has happened?

2 A. I believe three times.

3 Q. Do you know or can you remember what paper that
4 reportage occurred in?

5 A. That would have been the *Dispatch* and the *Record*.

6 Q. Do you know how many times if you just try and break
7 them up, was it in the *Dispatch* twice and in the *Record*
8 once or vice versa?

9 A. I think I only saw it in the *Dispatch* once. And that
10 was because of Joel's father. He gets the *Dispatch*. We
11 get the *Record*.

12 Q. And I know you are trying to. Let me just ask you again
13 in case you can. Can you tie this phenomena of you
14 being reported when you hadn't spoken to the reporter to
15 a name, for example, Joel Maldonado?

16 A. I can't tie it to him because I don't recall that name.

17 Q. Was it a male or a female do you remember?

18 A. That I spoke with?

19 Q. Yes.

20 A. It was a male.

21 Q. Do you remember speaking with Heidi Bubb?

22 A. No.

23 Q. How about Lauri Lebo?

24 A. No.

25 Q. You said there has been some instances where you have

1 been -- statements have been attributed to you, and you
2 have not spoken to the reporter?

3 A. Correct. Now I can say that those statements were said
4 to the original reporter that I did speak with. I don't
5 know if they share their stories with one another or
6 interviews. That, I don't know. But it seemed to me
7 that that is what had happened.

8 Q. Explain the phenomena?

9 A. Yes.

10 Q. Do you remember the statements? If we are focused on
11 these situations where the statements -- where you
12 believe they were made to a reporter but reported in
13 another paper or by another reporter?

14 A. Reporter.

15 Q. Do you recall making the specific statements that you
16 have in mind as we speak today?

17 A. Not specifically. But yes, I mean they were in the
18 newspaper. It was basically how I felt.

19 Q. Were they made to -- let's look at them. It sounds like
20 -- how many statements?

21 A. Maybe one for each time that it was in the newspaper.
22 Maybe three statements.

23 Q. Were those statements made to different reporters or the
24 same reporter?

25 A. They were made to the same reporter, the initial

1 reporter?

2 Q. Was that initial reporter a male?

3 A. Yes.

4 Q. Have you ever had any conversations with a Reverend
5 Warren Eshbach?

6 A. No.

7 Q. Did you create any documents in connection with this
8 litigation or this dispute? In other words as the
9 dispute unfolded, did you collect news reports? Did you
10 create any sort of timeline?

11 A. Not a timeline. There was a few articles or the letter
12 that came in the mail to everyone. But other than that,
13 no. I don't even think we even had them other than the
14 one letter that was sent out.

15 Q. And that letter is a letter from a church group that you
16 and Joel received?

17 A. Yes. That and also the letter from the School Board or
18 the School District that went out.

19 Q. Have you produced records relating to this dispute to
20 your attorneys?

21 A. Other than what I just told you, no.

22 Q. I want to make sure that whatever you have by way of
23 documents that relate to this dispute concerning the
24 biology text, the biology curriculum at Dover Area High
25 School, any of the Board members, you have provided to

1 your attorney so they could provide it to us?

2 A. Correct.

3 Q. Have you sent or received any e-mails relating to the
4 subject matter of this dispute?

5 A. Yes, I did not send. I have received.

6 Q. Give me an idea of what you have received.

7 A. I received an e-mail from an old friend who lives in
8 Florida with support, willing to take donations to
9 support the cause. E-mails from the lawyers, e-mails
10 from some of the plaintiffs.

11 Q. In we look at e-mails from plaintiffs, have you produced
12 those to your attorneys?

13 A. No.

14 Q. Do you know what plaintiffs sent you e-mails?

15 A. Bev, Cindy. I believe Steve sent one also.

16 Q. And generally --

17 A. You would have probably got them. I think they were
18 shot to everyone.

19 MR. LOWE: It is possible. I'm not sure.

20 BY MR. GILLEN:

21 Q. Were the e-mails among plaintiffs and their attorneys?

22 A. Yes.

23 MR. LOWE: That was my next question if it wasn't
24 yours.

25 BY MR. GILLEN:

1 Q. Let's look at -- this morning, Joel recounted a meeting
2 that you had with Jeff and Casey Brown in the fall he
3 thought around Thanksgiving or later in 2004 I believe.

4 Do you recall that meeting?

5 A. Yes.

6 Q. Apart from that meeting, did you have other meetings
7 with the Browns about --

8 A. No.

9 Q. -- this litigation?

10 A. No.

11 Q. I just want to get your best recollection of that
12 meeting, sort of how it came about and what was
13 discussed. And plainly, there are some statements there
14 that would be of some interest as an attorney for the
15 School Board.

16 What is your recollection as to how that meeting
17 with the Browns came to pass?

18 A. How did it occur?

19 Q. Yes.

20 A. I was curious about the Board. So I asked Joel if we
21 could go over to Jeff and Casey's because who better to
22 get information from.

23 Q. And did you call the Browns to suggest the meeting?

24 A. Actually not. We just went over.

25 Q. What is your best recollection as to when this meeting

1 occurred?

2 A. I would say late fall. I would say -- I want to say it
3 was sometime between Thanksgiving and Christmas,
4 somewhere in there.

5 Q. By way of trying to help you pinpoint it to the extent
6 you can, was it before or after the litigation was
7 filed?

8 A. I think it was right after.

9 Q. Right after the lawsuit was filed?

10 A. Yes.

11 Q. And again, just to try and help you get a fix so I have
12 an understanding --

13 A. No. I'm sorry. It was before. It was before the
14 litigation was actually filed.

15 Q. And that makes sense. What about if we look at October
16 as a sort of benchmark?

17 A. Okay.

18 Q. Was it before or after October; can you recall?

19 A. That, I don't recall. I think it was later. That is
20 why I am saying, but I can't remember exactly when it
21 was filed.

22 I know the conversation with Jeff and Casey was
23 before I talked with the reporter. That I do know. And
24 it was before the first time that we met with our
25 lawyers.

1 Q. Okay.

2 A. Okay?

3 Q. Yes. But was it before or after you had agreed to be a
4 plaintiff?

5 A. After.

6 Q. Just let me stand back and sort of -- I would like to
7 get a sense for how this issue came to your attention.
8 By this issue, I mean the biology text and curriculum at
9 Dover Area High School.

10 What is your best recollection for how you were
11 sort of -- you became aware of what was going on?

12 A. Paula's conversation, Paula's phone call.

13 Q. So let me ask you this; were you following it in the
14 paper prior to that?

15 A. No.

16 Q. Looking at that meeting with Jeff and Casey, tell me
17 what you can about what you remember.

18 A. I wanted to know why the Board was doing it. After we
19 had spoken with Paula and decided to join the suit, I
20 wanted to know why they were going about this, what
21 their reason for changing curriculum or bringing ID into
22 a public school setting was, what was their motivation.
23 I went there with that in mind.

24 We discussed that. We discussed the individual --
25 well, the two B's, Buckingham and Bonsell. And at that

1 point, I had even mentioned then I said why can't they
2 do it in a comparative religion class?

3 Casey then said she had suggested that. That was
4 vetoed by the Board. They did not want that at all.
5 They wanted it in science class.

6 They went through -- she claims that the Board
7 members -- at the time that she was a current Board
8 member or a Board member with Jeff, they had to go
9 through the biology textbook that one of the B's had
10 claimed was full of Darwinism and actually count how
11 many times Darwin was actually mentioned in the biology
12 text.

13 We were also told by them that any other religion
14 was again heathens or damned to hell. Anyone who would
15 join the lawsuit would be ostracized in Dover. Just
16 general discussion.

17 And we went into two different religions and why
18 couldn't that be brought in. And if it was brought into
19 science as creation or Intelligent Design, whose
20 Intelligent Design? That would take a whole year in
21 itself just to learn that without any other subject
22 matter taught.

23 And that is not -- science is not the place or
24 science class is not the place to conduct that type of
25 education.

1 Q. You mentioned a few things here. Let me make sure I get
2 a full sense for what occurred at the conversation.

3 You said why the Board was doing it. What was
4 your understanding of what the Board was doing when you
5 met with the Browns?

6 A. That Intelligent Design was going to be offered in a
7 science or biology class. And Intelligent Design is a
8 creator of some sort, whoever's idea is it, and it goes
9 back to still being an entity, which is religion, not
10 science. And they wanted to bring that into a science
11 classroom.

12 Q. You say offered in a science class. Did you have a
13 sense or an understanding for how it would be offered at
14 that time -- at the time of this meeting?

15 A. As another option other than -- or another reason why we
16 are here other than Evolution.

17 Q. Did you have a sense for whether it was going to be
18 subject matter that was taught to the students during
19 classroom instruction?

20 A. Yes.

21 Q. As we sit here today, do you have an understanding how
22 Intelligent Design is referenced in connection with
23 biology class?

24 A. Yes.

25 Q. What is that understanding?

1 A. The understanding that I have is that no matter what
2 name you give it, it comes down to creation. Okay?

3 Q. I see what you are saying.

4 A. You are giving creation as an option other than
5 evolution. And creation is not based in scientific
6 fact. It is based in faith. Therefore, it should not
7 be taught in a science classroom.

8 Q. Okay. And I see now you are making -- you see
9 Intelligent Design as Creationism?

10 A. Yes.

11 Q. I am asking you a question that is focused on something
12 a little differently, how the curriculum change affects
13 classroom instruction.

14 Did you have an understanding as to how
15 Intelligent Design would be referenced? When you had
16 this meeting with Jeff and Casey, did they tell you
17 anything about what the Board --

18 A. No.

19 Q. That is what I was trying to get a sense for. Thank
20 you. In terms of you said you were interested in why,
21 why are they doing this, did Jeff or Casey address
22 that --

23 A. Yes.

24 Q. -- question? Tell me to the extent you can recall what
25 they told you about why the Board was doing it.

1 A. They wanted Christianity brought back into the school.

2 Q. Was it Jeff or Casey?

3 A. Both.

4 Q. Both said that. When they said that, Deb, did they give
5 you a -- did they tell you why they believed that?

6 A. Why either Buckingham or Bonsell believes that? They
7 are very Christian people, and they want Christianity to
8 be brought back into the classroom. I believe the
9 statements were that this country was founded on
10 Christian beliefs.

11 Q. And I understand, and I will ask about those statements.
12 They are in the complaint. Right now, I am just trying
13 to get a sense for this meeting with Jeff and Casey.

14 Did those statements come up during that meeting?

15 A. Yes.

16 Q. And were those statements tied to specific Board
17 members?

18 A. Yes.

19 Q. I think I know, but I will ask anyway: Can you remember
20 specifically which Board member?

21 A. No. It's Buckingham or Bonsell, but I can't remember
22 specifically who said or who did what.

23 Q. And did they say anything else as sort of providing a
24 basis for their assertion to you that the Board was
25 operating from religious premises or motives?

1 A. I don't know what specifically was said other than, you
2 know, the church -- Harmony Group Church, and that they
3 were members of it. And I believe if I am not mistaken
4 one of the two, their father is a minister or has a
5 religious background there.

6 And it was just in general conversation. It was
7 the overall tone of the conversation at that point of
8 the conversation.

9 Q. Sure. All right. Let's talk about the text. Did they
10 -- Jeff or Casey -- mention the Miller and Levin text?
11 You have said some comment came up about vetting that
12 text, going through it?

13 A. Yes.

14 Q. I want to get a sense for what sort of discussion
15 related to that text.

16 A. Just that one of the School Board members had said that
17 it was filled with Darwinism, and they had to go through
18 it to count how many times Darwin was actually mentioned
19 throughout the text.

20 Q. And is one of the Board members, is it one of the two
21 B's?

22 A. Yes.

23 Q. To try and make this simpler, it seems like the two Bs
24 as we have been calling them here are the focal point of
25 this exchange.

1 Did other Board members come up?

2 A. No.

3 Q. This is adequate for our purposes I'm sure, but apart
4 from going through the biology text and trying to
5 identify how many times Darwin and his theory was
6 mentioned, anything else about the text that was
7 discussed?

8 A. No.

9 Q. Anything about the balance or presentation of Darwinian
10 Theory? Do you recall that coming up in this
11 conversation?

12 A. No, not in this conversation at all.

13 Q. Anything relating to gaps or weaknesses in the theory?
14 Do you recall the Browns addressing that?

15 A. No.

16 Q. How about the text *Of Pandas*, did you discuss that?

17 A. No, other than mentioning the book at that point. And I
18 still really don't know anything about the book other
19 than it is based -- a basis for ID.

20 Q. When you say that, are you relying on Joel's examination
21 of the text?

22 A. Yes and others.

23 Q. Who besides Joel just so I have a sense for it?

24 A. I believe some of the other plaintiffs have said that
25 they have read through it.

1 Q. Again, I am just trying to get an understanding for what
2 Jeff and Casey said. Did they say outright that they
3 thought one of the two B's wanted Creationism taught in
4 the school?

5 A. Yes.

6 Q. Did they explain the basis for that assertion? Had they
7 heard or did they tell you they had heard one of the two
8 B's making a statement that he wanted Creationism taught
9 in the classroom?

10 A. Yes.

11 Q. Did they say who made it?

12 A. No.

13 Q. Did they say when that statement was made?

14 A. Not that I recall. During the conversation, they were
15 talking about different Board meetings and did that
16 happen then or did that happen then. I don't remember
17 what happened when. It was general conversation.

18 Q. Was your discussion confined to Board meetings from what
19 you could tell? Were they talking about other comments?

20 A. They were talking about Board meetings. They were
21 talking about private meetings that the Board itself
22 had. And then we just talked in general.

23 Q. I think I asked this, but I just want to be sure. You
24 had this meeting with Jeff and Casey. Were there other
25 meetings with Jeff and Casey besides that?

1 A. No.

2 Q. I want to just focus in on the statement you made. You
3 have got -- you have referenced a comment here that Joel
4 referenced this morning of being a member of a certain
5 church or else there is some speculation as to your
6 eternal salvation and so on.

7 I take it from our discussion here today that that
8 statement came up during this conversation with Jeff and
9 Casey?

10 A. Correct.

11 Q. Let me ask you: Did they say anything more about when
12 this was said, or the context, or how that came up?

13 A. I believe that statement was said after a School Board
14 meeting or during a private meeting I believe.

15 Q. And I'm just trying to get a sense for the context of
16 that. Was the statement made as -- how did it relate to
17 the biology curriculum, or did you have an understanding
18 that that statement which was recounted in this meeting
19 with Jeff and Casey had a relationship to the Board's
20 actions with respect to the biology curriculum?

21 A. I had a feeling that it did have to do with that. That
22 it was basically what about other religions? And on and
23 on. It was just that they didn't care. It was their
24 religion.

25 Q. I am on the outside trying to figure out. You can

1 understand how the conversation seems a little, what
2 shall I say, it is difficult for me to understand except
3 that there seems to be something that -- a sense you had
4 that Jeff and Casey were saying the Board -- one of the
5 two B's is acting from a religious motive, and this is
6 how you can tell?

7 A. Yes.

8 Q. What I am trying to figure out is did they explain to
9 you what this comment about church membership had to do
10 with the biology curriculum? What was the connection,
11 or how did you see them connected, or did you see them
12 connected?

13 A. I took it that it was connected simply because it was
14 brought up in the same conversation as we were talking
15 about the change in the curriculum and bringing *Of*
16 *Pandas and People* in.

17 And I believe it was well -- and I believe I may
18 have said this to Jeff and Casey that, well, growing up
19 Roman Catholic, being taught by a nun and the separation
20 that was even taught through high school, it was they
21 have already said that. If it is not Harmony Grove, you
22 are damned to hell.

23 Q. Wow. I just --

24 A. I took it that the other School Board members, or some
25 of them, had talked to them about what about other

1 religions, what about other beliefs? And this is what
2 they got.

3 Q. Let me ask you this, too. There's a statement that is
4 attributed to one of the two B's about being Born Again.

5 Did that statement come up during that
6 conversation?

7 A. I don't remember that statement.

8 Q. How about you've referenced the statement that anyone
9 who signed onto the lawsuit would be ostracized --

10 A. Yes.

11 Q. -- in Dover? How did that come up?

12 A. That came up in conversation. And I don't know whether
13 it was Joel that mentioned it or if it was Jeff -- or
14 Casey's daughter that had mentioned it because she was
15 also there. I wonder how the School Board to going to
16 take this.

17 And I believe it was Jeff who said that's already
18 been stated that anyone who signs on to this will be
19 ostracized throughout the Dover community.

20 Q. Do you recall that statement being attributed to a
21 specific person?

22 A. One of the B's.

23 Q. Did you have a sense of -- let me ask you this: Was the
24 statement made to the effect that persons might have to
25 be persuaded?

- 1 A. I don't remember hearing that. Okay? Joel has
2 mentioned that to me. I don't know if that was while he
3 and Jeff were talking because the four of us could sit
4 here, and her and I could be talking, and you two could
5 be talking and not hearing what each other is saying
6 really.
- 7 Q. Okay. That is fine. Do you remember laughing about it,
8 the notion of --
- 9 A. I remember laughing about being ostracized.
- 10 Q. How about the statement that the earth is only 4,000
11 years old and fossils are here to fool nonbelievers? Do
12 you recall the statement?
- 13 A. Yes.
- 14 Q. Who said that?
- 15 A. From what I got, it was one of the B's.
- 16 Q. In this conversation, who recounted that statement being
17 made, Jeff or Casey?
- 18 A. Jeff, I believe. I believe it was Jeff who said that.
19 Let me think. Yes, I believe it was Jeff who had said
20 that.
- 21 Q. You say that the Brown's daughter was present?
- 22 A. Yes.
- 23 Q. What is her name?
- 24 A. Julianna.
- 25 Q. Was anyone else present?

1 A. I don't know what Julianna's last name is because it is
2 Carol's daughter.

3 Q. Does she live in Dover?

4 A. She lives with them.

5 Q. Was anyone else present?

6 A. No.

7 Q. We have talked a little bit about this discussion with
8 the Browns. I understand that you had the meeting with
9 them because you were trying to get more information
10 about the Board's actions and so on.

11 Apart from this meeting, do you have any other
12 basis for your understanding of why the Board was
13 engaged in a curriculum change?

14 A. Not at the beginning. Only things I have read in the
15 newspaper.

16 Q. That was my next question. So really I just want to
17 make sure that when you have looked at the Board's
18 actions, you didn't attend the meetings, but you did --
19 you were curious; you went and spoke to the Browns who
20 were Board members?

21 A. Correct.

22 Q. And your understanding of how the Board was operating,
23 what its premises were and so on is derived from them?

24 A. Correct. And also what I had read in the newspaper.

25 Q. Did Angie Yingling come up during this conversation with

1 the Browns?

2 A. Other than that she was trying to resign, and they felt
3 that she was being pressured to stay on, not to resign,
4 that was about it.

5 Q. And that's what I was going to ask you about. When
6 Angie was discussed, was there a notion of her being
7 pressured?

8 A. Yes.

9 Q. Tell me what you can recall about that discussion. Did
10 they say who was applying pressure?

11 A. No. That, I don't remember if they said that or not. I
12 don't think they did. I just think they said the Board
13 was pressuring her to stay on.

14 Q. To stay on?

15 A. Yes.

16 Q. Any other reason for pressure that you can recall?

17 A. Not that I can recall.

18 Q. Let me ask you: Do you recall any statements being made
19 about Angie Yingling being questioned about her
20 religious beliefs, did that come up during this
21 conversation?

22 A. Not that I recall.

23 Q. How about patriotism, her patriotism being questioned or
24 that coming up?

25 A. No, not that I recall.

1 Q. Did the Browns say anything about their feeling
2 pressured or --

3 A. No. I don't feel that -- no. No, they weren't
4 pressured. I didn't get that they were being pressured
5 by anyone because I believe they had both resigned
6 before anything had taken place.

7 Q. Was this meeting before or after they had resigned?

8 A. After.

9 Q. Did they say anything about their decision to resign,
10 why they had decided to resign?

11 A. I remember Jeff saying something. But what exactly it
12 was, I can't recall. If I said it right now, it may be
13 totally off base.

14 Q. That is fine. I am just trying to get a sense of what
15 you remember about the meeting. I just want to get a
16 sense for your understanding of Intelligent Design
17 Theory, what the Board is -- what its interest in
18 Intelligent Design Theory is.

19 Have you taken steps to acquaint yourself with
20 Intelligent Design Theory?

21 MR. LOWE: Could we have a same standing objection
22 that we -- you can feel free to call it Creationism or
23 Intelligent Design. We don't understand it as a theory.
24 We don't recognize it as a theory. If we just have that
25 same standing objection --

1 MR. GILLEN: Fine, understand.

2 BY MR. GILLEN:

3 Q. With that objection in mind, Deb, I am just asking you
4 have you done any reading, anything to get yourself
5 acquainted with it?

6 A. Not a lot truthfully. From what I have gleaned on the
7 Internet, what I have gotten from other people, it is
8 that because of the gaps in evolution, Intelligent
9 Design fills those gaps or makes more sense that there
10 had to be something that began all. And to me -- that
11 is a greater designer of all things. And to me, that is
12 creation.

13 Q. And just to get a sense for your objection to the
14 curriculum change, obviously you are a plaintiff in a
15 lawsuit. I think at the beginning of the deposition,
16 you expressed some of your concerns. I want to make
17 sure I understand them.

18 What is it about the Board's curriculum change
19 that you find objectionable?

20 A. It doesn't belong in a science class.

21 Q. By it, you say Intelligent Design?

22 A. Correct, or any other creation theory.

23 Q. And I think you have said that -- you discussed maybe it
24 could be in comparative religions or something else?

25 A. Social studies, a comparative religion class, in the

1 home.

2 Q. And when you say that, I just want to make sure I
3 understand. Is your objection because you don't see
4 Intelligent Design as science; you think it is a
5 mismatch?

6 A. Yes.

7 Q. Is there anything else that you see as objectionable
8 with respect to the Board's curriculum change, its
9 notion of making students aware of Intelligent Design
10 Theory? Is there any other problem you have with that?

11 A. Explain that again to me.

12 Q. Totally fine. I see or I understand what you're saying
13 today is that you think Intelligent Design Theory is not
14 science?

15 A. Correct.

16 Q. And therefore doesn't belong in a science classroom?

17 A. Correct.

18 Q. You think it is more appropriately put in a social
19 studies or comparative religions class?

20 A. Correct.

21 Q. Apart from that, is there anything else that you find
22 objectionable about the Board's conduct?

23 MR. LOWE: She has answered this question at the
24 beginning of the deposition.

25 MR. GILLEN: That is what I am trying to

1 understand.

2 BY MR. GILLEN:

3 Q. Apart from what you have discussed, which I think I do
4 have an understanding on --

5 A. Their conduct as far as their own personal conduct?

6 Q. No, their conduct in conducting the official business of
7 the Dover Area School District School Board. The book
8 *Of Pandas And People*, do you have an understanding what
9 was the final result of the Board's decision with
10 respect to that text?

11 A. Yes.

12 Q. What is that understanding?

13 A. That understanding is a Board member or an
14 administrative person is reading a statement to the
15 ninth grade class that there is another book in their
16 library that they can read to have another slant,
17 another idea of how things came to be.

18 Q. Now let me ask you about that. If we look at that
19 statement making them aware of the book and that they
20 can reference it, do you object to that?

21 A. Yes.

22 Q. What is the basis for your objection?

23 A. Because that is faith belief. It is not scientifically
24 proven. Therefore, it should not be in a science
25 classroom.

1 Q. Do you object to the book being in the library?

2 A. No.

3 Q. Do you have any understanding as we sit here today about
4 whether Intelligent Design is the subject of classroom
5 instruction?

6 A. As far as I know, it is not.

7 Q. Are you aware of any other donation of books to the
8 Dover Area School District?

9 A. Yes.

10 Q. What donation?

11 A. There's other books being donated. But what the name of
12 that book is -- I should have thought that you would
13 have asked that question, but I didn't. I can't
14 remember the name of the book, but there is other books
15 being donated. Donated, but whether they have been
16 accepted yet or not, that I do not know.

17 Q. I just want to get a sense for have you had any
18 conversations with persons about that donation?

19 A. No.

20 MR. GILLEN: I'd like to take a short break.

21 (A recess was taken.)

22 AFTER RECESS

23 BY MR. GILLEN:

24 Q. Deb, just to make sure I get an understanding for what
25 you know about these comments as they relate to Angie

1 Yingling, I just want to be sure. Do you recall during
2 this conversation you had with Jeff and Casey Brown in
3 the fall of 2004, fall and winter, the subject of Angie
4 Yingling coming up?

5 You have told me that you recall the Browns making
6 a statement to the effect that the Board was pressuring
7 her not to resign. I just want to make sure can you
8 recall any statements being made questioning Angie
9 Yingling's religious convictions?

10 A. No.

11 Q. Or other sorts of pressure applied by any Board member?

12 A. No. Other than they just felt that she was being
13 pressured.

14 Q. It's pressure to stay on the Board?

15 A. Correct.

16 Q. Not resign?

17 A. Correct.

18 Q. And in terms of your concern with -- I want to look at
19 it just in terms of Ian. And you understand the
20 statement is being read that references Intelligent
21 Design Theory and let's the student know that there is
22 this book in the library.

23 What is it that you object to with Ian being
24 exposed to that statement? What is your concern?

25 A. I go back to it is still a science class. And ID to me,

1 whatever else you want to call it, it is still
2 Creationism. And that does not belong in a science
3 class.

4 MR. GILLEN: Okay. I have no further questions.

5 MR. LOWE: No questions.

6 (The deposition was concluded at 2:45 p.m.)
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COMMONWEALTH OF PENNSYLVANIA :
: COUNTY OF CUMBERLAND :

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

DEBORAH FENIMORE

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

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

Dated at Camp Hill, Pennsylvania, this 14th day of April, 2005.

COMMONWEALTH OF PENNSYLVANIA

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