

I N D E X
WITNESS

TAMMY KITZMILLER	Examination
By Mr. Gillen	3

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1 just in connection with this action, you have
2 been placed under oath. I get to ask you some
3 questions to learn about your side of the
4 story. That's basically my purpose here today.

5 And it consists of a series of
6 straightforward questions and answers. I say
7 straightforward. If you find that my questions
8 are confusing, please indicate that and I'll do
9 my best to clarify them.

10 There's a couple of protocols unique to
11 the reporting process. Any answer you give has
12 to be verbal. So frequently we find ourselves
13 making gestures, but for this purpose we have
14 to say yes or no ideally so it can be
15 transcribed.

16 Again, I'll try and make my questions
17 clear. If you're uncertain what I'm asking,
18 please let me know and I'll do my best to make
19 the question more precise.

20 By the same token, if you give me an
21 answer and feel a need to explain or clarify,
22 please let me know. That's your right, and
23 I'll let you do that.

24 Same thing Eric said yesterday, this is
25 not an endurance contest. If you need a break

1 to go to the bathroom or to talk to your
2 counsel, please let me know and of course I'll
3 let you do that.

4 A. Okay.

5 MR. ROTHSCHILD: Patrick, before you get
6 started, we want to reserve the right to read
7 and sign the deposition.

8 BY MR. GILLEN:

9 Q. Would you please state your full name for the
10 record?

11 A. Tammy J. Kitzmiller.

12 Q. And please spell it.

13 A. T-a-m-m-y, J, K-i-t-z-m-i-l-l-e-r.

14 Q. Would you please give me your current address?

15 A. 2045 Andover Drive, Dover.

16 Q. And your telephone number?

17 MR. ROTHSCHILD: She doesn't need to give
18 that information. Contact her through us.

19 MR. GILLEN: Okay.

20 BY MR. GILLEN:

21 Q. Current employment?

22 A. I work for a landscaper.

23 Q. As you sit here today -- I just want to ask you
24 a few questions to make sure that we're
25 communicating clearly -- are you on any

1 medication that would impair your ability to
2 hear my questions?

3 A. No.

4 Q. And respond to them?

5 A. No.

6 Q. Do you have any handicap that affects your
7 perception, visual, hearing?

8 A. No.

9 Q. If we look at the -- say roughly the course of
10 time over which these events took place from
11 say June 2003 through 2004, at any time during
12 that period have you -- has your perception
13 been impaired by any medication you were on or
14 taking?

15 A. No.

16 Q. Any handicaps or injuries that impaired your
17 ability to perceive?

18 A. No.

19 Q. Did you speak with anyone in preparation for
20 coming to this deposition today?

21 A. My attorney Eric.

22 Q. Okay. Apart from your attorneys?

23 A. No.

24 Q. Did you review any documents or other materials
25 prior to coming to the deposition in

- 1 preparation for the deposition?
- 2 A. Just with Eric.
- 3 Q. Apart from your review of documents with Eric,
4 did you review any other documents?
- 5 A. No.
- 6 Q. When you consulted with Mr. Rothschild, who was
7 present?
- 8 A. Just Mr. Rothschild and Mr. Harvey.
- 9 Q. Are you married?
- 10 A. No.
- 11 Q. Do you have children?
- 12 A. Yes.
- 13 Q. How many?
- 14 A. Two.
- 15 Q. What grades?
- 16 A. 9th and 11th.
- 17 Q. And the name of your child in the 9th grade?
- 18 A. Jessica.
- 19 Q. And the name of your child in the 11th grade?
- 20 A. Megan.
- 21 Q. Do you have sole custody rights to your
22 children meaning physical custody and legal
23 custody?
- 24 A. I have joint custody with their father.
- 25 Q. Is that joint legal custody?

- 1 A. (No response)
- 2 Q. I'm sorry, let me explain just in layman's
3 terms. By virtue of whatever legal instrument
4 that separated the two of you, does he have
5 rights to govern the upbringing of his child's
6 education and so on?
- 7 A. (No response)
- 8 Q. Input into--
- 9 A. To the best of my knowledge, I would assume
10 that's what it means.
- 11 Q. Okay. Has there been a legal document entered
12 in a court file which describes the rights of
13 your former spouse and yourself to the custody
14 of the children?
- 15 A. Yes. But I can't really say what.
- 16 Q. That's fine. I understand. Just day-to-day,
17 to give me a sense for that, your children live
18 with you?
- 19 A. Yes.
- 20 Q. Was your ex-spouse consulted in connection with
21 the filing of this action?
- 22 A. No.
- 23 Q. Are there any legal proceedings pending with
24 respect to the custody of your children?
- 25 A. No.

- 1 Q. Any contemplated adoptions?
- 2 A. No.
- 3 Q. Please just give me a brief description of your
4 educational background. What's your highest
5 level of education?
- 6 A. I graduated high school.
- 7 Q. What high school was that?
- 8 A. Bermudian Springs.
- 9 Q. Excuse me?
- 10 A. Bermudian Springs.
- 11 Q. Okay. That's fine. What was the highest level
12 of science instruction you received?
- 13 A. As far as I can recall probably 10th grade
14 biology, but I'm not certain.
- 15 Q. That's fine. Do you have an interest in
16 science?
- 17 A. Yes.
- 18 MR. ROTHSCHILD: Objection, vague.
- 19 MR. GILLEN: That's fine.
- 20 BY MR. GILLEN:
- 21 Q. Do you read in science? Do you read science
22 periodicals?
- 23 A. I wouldn't say science periodicals, no.
- 24 Q. Do you read in the subject matter of science
25 generally in your day-to-day reading and so on?

1 A. I'm not sure how you're clarifying--

2 Q. That's fine. I'm just trying to get a sense
3 for your familiarity with the subject matter of
4 this litigation. And so I'm just trying to get
5 a sense for how you acquaint yourself with
6 scientific subject matter.

7 You have indicated that you have some
8 instruction in connection with your high school
9 education. I'm asking if you've done any
10 further reading beyond that in the area of
11 science or -- and let me make it more specific,
12 biology?

13 A. I read lots of things daily.

14 Q. Is there anything that's specific to scientific
15 subject matter that you subscribe to or read?

16 A. National Geographic.

17 Q. Okay. And do you subscribe to that?

18 A. Yes.

19 Q. And do you read it?

20 A. Yes.

21 Q. Do you recall articles that address this
22 subject matter?

23 MR. ROTHSCHILD: Can you define subject
24 matter?

25 MR. GILLEN: Sure.

1 BY MR. GILLEN:

2 Q. Biology, the theory of evolution.

3 A. Not specific articles.

4 Q. Okay. That's fine. How about any articles on
5 intelligent design?

6 A. I don't recall specific articles.

7 Q. That's fine. And I'm not asking you to--
8 Honestly, it's not a quiz. I'm just trying to
9 get a sense of your familiarity with the
10 subject matter.

11 How about the theory of evolution,
12 anything specific to that, any reading in that
13 area on that theory?

14 A. I read a lot of different things. I'm sure
15 I've read about evolution.

16 Q. Based on your reading, do you have an
17 understanding -- again, a general understanding
18 of the content of the theory of evolution?

19 A. Yes.

20 Q. And again, just generally speaking, how do you
21 understand that theory?

22 A. That species over a period of time have
23 evolved.

24 Q. Do you have any familiarity with specific
25 proponents of that theory? Do you associate it

1 with specific individuals?

2 A. I'm not sure--

3 Q. I'm just asking, when you think of the theory
4 of evolution, do you think of any specific
5 persons as the proponents of that theory?

6 A. Not particularly.

7 Q. Okay. Again, just generally, do you have an
8 understanding as to the content of intelligent
9 design theory?

10 A. I feel I understand what it's about.

11 Q. Sure. Would you please describe for me that
12 understanding?

13 A. That there's a master intellect that basically
14 created all things.

15 Q. Okay. Do you have a sense-- When you say a
16 master intellect, do you have any knowledge
17 concerning whether intelligent design theory
18 posits a thesis or a hypothesis with respect to
19 the master intellect?

20 MR. ROTHSCHILD: Object to the form. You
21 can answer. It's vague.

22 BY MR. GILLEN:

23 Q. You can answer.

24 MR. ROTHSCHILD: You can answer if you
25 understand the question.

1 A. Yeah, could you clarify that a little?

2 BY MR. GILLEN:

3 Q. Certainly, glad to try. With respect to
4 intelligent design theory, you said that you
5 had an understanding that it involves a master
6 intellect.

7 I'm asking you, do you have an
8 understanding as to what intelligent design, if
9 anything, posits with respect to that master
10 intellect?

11 MR. ROTHSCHILD: Same objection.

12 A. (No response)

13 BY MR. GILLEN:

14 Q. Do you know if intelligent design posits a
15 hypothesis as to the nature of the master
16 intellect?

17 MR. ROTHSCHILD: Same objection.

18 A. I feel personally it's speaking of God.

19 BY MR. GILLEN:

20 Q. I understand. With respect to that belief, do
21 you have a source of that belief? In other
22 words, where did you get that idea?

23 A. It's my personal thought.

24 Q. Okay. So it's your belief that when you hear
25 the term master intellect it refers to God?

1 A. That's what I feel, yes.

2 Q. Have you read anything in intelligent design
3 theory that posits that?

4 MR. ROTHSCHILD: Objection to the form.

5 A. Again, I'm not-- I don't really understand
6 what you mean by--

7 BY MR. GILLEN:

8 Q. Okay. And again, I'm trying to be as clear as
9 I can. It's an odd subject matter in a way.
10 You said that when you hear the term master
11 intellect, you consider that to be God.

12 I'm asking you have you ever seen any
13 publication describing intelligent design
14 theory which says that the master intellect is
15 God?

16 MR. ROTHSCHILD: Objection to form. And
17 my objection is based on the term intelligent
18 design theory, which I think is a misnomer. If
19 I can have a standing objection to that, I
20 wouldn't keep objecting.

21 MR. GILLEN: You most certainly can.

22 BY MR. GILLEN:

23 Q. Have you seen that equation of the master
24 intellect and God in any materials relating to
25 intelligent design?

1 A. Yes, I have.

2 Q. Which materials?

3 A. I can't specifically say. I know I have seen
4 materials that relate intelligent design to
5 creationism and God.

6 Q. Okay. Can you recall those materials?

7 A. Specifically, no, I--

8 Q. Okay. That's fair enough. I'm just trying to
9 get a sense for the sources of your knowledge
10 with respect to intelligent design and your
11 beliefs. That's all.

12 You've mentioned another term that's come
13 up a lot, and I'd just like to get your
14 understanding of that term, creationism. Do
15 you have a belief or understanding concerning
16 the subject matter of creationism?

17 A. Yes.

18 Q. What is that?

19 A. I feel it means the same thing, that a person
20 or deity has created everything.

21 Q. When you say a person or deity, do you mean a
22 living person or some other kind of person?

23 A. No. I just feel basically again, God.

24 Q. So when you say person or deity, when you say
25 deity, do you mean anything other than God?

- 1 A. No.
- 2 Q. Okay. So really person or deity, you mean God?
- 3 A. Correct.
- 4 Q. Okay. I just wanted to make sure I understood
5 you. Are you familiar with any scientists that
6 are proponents of intelligent design theory?
- 7 A. No.
- 8 Q. Are you familiar with any books, articles,
9 texts that speak to intelligent design theory?
- 10 MR. ROTHSCHILD: Objection, speak to is
11 vague.
- 12 MR. GILLEN: Okay.
- 13 BY MR. GILLEN:
- 14 Q. Are you familiar with any books -- and that
15 will be compound -- books that describe
16 intelligent design theory, lay out the theory?
- 17 A. I know Of Pandas and People.
- 18 Q. Okay. How about any articles that lay out or
19 describe intelligent design theory?
- 20 A. I've read articles.
- 21 Q. Can you recall as we sit here today any
22 articles that describe intelligent design
23 theory?
- 24 A. Not specifically, no.
- 25 Q. You've mentioned the book Of Pandas and People.

1 In addition to that book, are you familiar with
2 any other books that describe, lay out, explain
3 intelligent design theory?

4 A. No.

5 Q. As we sit here today, it's evident that you are
6 represented by counsel. I just want to
7 understand, when did you retain counsel with
8 respect to the subject matter of this
9 litigation?

10 A. To the best of my knowledge, I believe it was
11 October 28th when I contacted Paula Knudsen.

12 Q. Have you executed a retainer agreement with any
13 of your attorneys?

14 A. (No response)

15 Q. Have you signed a contract or agreement?

16 A. Yes.

17 Q. Okay.

18 (Defendants' Deposition Exhibit #1 was
19 marked for identification.)

20 BY MR. GILLEN:

21 Q. I've just marked what is going to be called
22 Defendants' Exhibit 1 for the purpose of this
23 deposition. If you'd look at that, you'll see
24 it's titled complaint. And it's the complaint
25 filed in this action.

1 I just want to get a sense for your
2 familiarity with the other plaintiffs in the
3 lawsuit.

4 If you'd turn to Page 5, if you look at
5 numbered paragraph 4, there's a reference to
6 plaintiffs Bryan and Christy Ream or Rehm --
7 forgive me if I'm mispronouncing it -- spelled
8 R-e-h-m. Do you know them?

9 A. Not personally.

10 Q. Just with respect to residence, do you know if
11 they're residents of Dover?

12 A. Yes.

13 Q. Do you know their family situation meaning
14 their children?

15 A. No.

16 Q. Have you ever had any conversations with the
17 Rehms about the lawsuit that were not
18 consultations with your attorney?

19 A. Not that I can recall.

20 Q. Okay. If you look at numbered paragraph 5,
21 there's a reference there to the plaintiffs
22 Deborah F. Fenimore and Joel A. Leib. Do you
23 know the Leibs -- or excuse me, let me take
24 that back. Do you know Deborah Fenimore?

25 A. No.

- 1 Q. And Mr. Leib?
- 2 A. No.
- 3 Q. Do you have any knowledge about their
4 residence?
- 5 A. No.
- 6 Q. Or children?
- 7 A. No.
- 8 Q. Okay. Try to make this quick. Same thing for
9 paragraph 6 reference to plaintiff Steven
10 Stough, S-t-o-u-g-h. Do you know Mr. Stough?
- 11 A. Not personally, no.
- 12 Q. His residence, do you know any facts about his
13 residence?
- 14 A. Other than what's stated here, no.
- 15 Q. That's fine. Okay. Paragraph 7 plaintiff Beth
16 A. Eveland. Do you know Miss Eveland?
- 17 A. Not personally, no.
- 18 Q. Okay. That's fine. Paragraph number 8
19 plaintiff Cynthia Sneath. Do you know--
- 20 A. She's my neighbor.
- 21 Q. Okay. Do you know whether she lives in Dover?
- 22 A. Yes.
- 23 Q. Do you know if she has a child in the first
24 grade?
- 25 A. I believe that's the grade he's in.

1 Q. Okay. But do you know if she has a son?

2 A. Yes.

3 Q. And do you know whether she has a child of
4 preschool age?

5 A. Yes.

6 Q. Has she made any statements to you about her
7 intent with respect to the education of those
8 children?

9 MR. ROTHSCHILD: Outside consultations
10 with counsel?

11 MR. GILLEN: Exactly.

12 A. Not that I can really recall, no.

13 BY MR. GILLEN:

14 Q. Okay. Has she made any statements to you in
15 connection with plans to move or perhaps
16 moving?

17 A. None that I know of, no.

18 Q. Have you had conversations with Miss Sneath
19 about the subject matter of this litigation,
20 the facts alleged in the complaint, apart from
21 conversations that were in the presence of
22 counsel and the other plaintiffs?

23 A. Could you clarify that? Do you mean--

24 Q. Sure, I'll try and do so. Have you had
25 conversations with Miss Sneath about this

1 litigation?

2 A. Specifically about the litigation?

3 Q. Yes, the subject matter of the litigation.

4 Generally and again to the--

5 MR. ROTHSCHILD: In fact, I just want to
6 clarify here -- and maybe we can help by
7 clarifying what you mean by subject matter.

8 Obviously you're not trying to get
9 anything said in the presence of counsel.
10 Similarly, I would instruct the witness not to
11 answer if Miss Kitzmiller has spoken with Miss
12 Sneath or any of the other plaintiffs about
13 things that were discussed with counsel about
14 the litigation even if it was outside our
15 presence.

16 MR. GILLEN: Well, let me see if there are
17 such communications and then perhaps we can
18 visit that.

19 BY MR. GILLEN:

20 Q. Let's just take it generally. Mr. Rothschild
21 is correct, I do not -- when I ask you
22 questions about conversations with Mr. Sneath
23 to start with, we take right off the table
24 consultations in which your counsel was present
25 and you were communicating as a group with your

1 counsel about the subject matter of this
2 litigation, by which I mean the facts alleged
3 in the complaint and generally speaking the
4 facts surrounding the biology curriculum
5 dispute that's at issue.

6 Have you had conversations with Miss
7 Sneath about that subject matter?

8 A. Again, I'm a little confused. Are you asking
9 whether we spoke about it?

10 Q. Yes.

11 A. About the biology curriculum?

12 Q. Yes.

13 A. Yes, we did.

14 Q. Did you have conversations prior to retaining
15 counsel?

16 A. As far as I can recall, I would think we
17 discussed it, yes.

18 Q. Can you recall those conversations?

19 A. I don't remember what we specifically talked
20 about.

21 Q. All right. I understand. And I wouldn't ask
22 you to recall exact words unless you could.
23 How about generally speaking the subject matter
24 of those conversations?

25 A. I think I may have ask her what she felt or how

1 she felt about it.

2 Q. About the biology curriculum issues that were
3 being discussed?

4 A. Yes.

5 Q. Around what time would those conversations have
6 taken place?

7 A. I can't recall a specific date. I would have
8 to say approximately maybe a week before
9 contacting Paula.

10 Q. Okay. Do you recall anything that Cynthia
11 Sneath said to you about the biology
12 curriculum?

13 A. Not specifically.

14 Q. Okay. Since that time, have you and Miss
15 Sneath talked about the litigation not with
16 your attorneys?

17 MR. ROTHSCHILD: You can answer that yes
18 or no.

19 A. Yes.

20 BY MR. GILLEN:

21 Q. And what have you talked about, except as Eric
22 has indicated I don't want the legal advice.

23 MR. ROTHSCHILD: So I'm just instructing
24 you not to answer to the extent what we talked
25 about or what legal advice we may have given to

1 you each individually.

2 But if you had conversations that don't
3 involve the legal advice, just about the facts,
4 you can answer.

5 A. I would think most of our conversations were
6 probably how we felt about it.

7 BY MR. GILLEN: .

8 Q. Okay. So do you recall any conversations about
9 the subject matter that didn't entail
10 discussion of legal advice?

11 A. I don't recall specific conversations, no.

12 Q. Okay. Do you recall in general?

13 A. Again, I would have to say we probably just
14 spoke mostly about how we felt about things.

15 Q. Do you recall any of those conversations about
16 your feelings or beliefs?

17 A. Again, not specifically, no. I can't sit
18 here--

19 Q. Okay. And I'm just trying to-- Do you
20 remember anything Miss Sneath said to you about
21 her beliefs or feelings with respect to the
22 litigation?

23 A. (No response)

24 Q. That's all right.

25 A. Yeah, I don't recall anything specific.

- 1 Q. That's fine. And I'm just asking for the best
2 of your recollection. That's all I can ask
3 for. Do you have an impression concerning
4 whether Ms. Sneath's beliefs and opinions are
5 the same as yours?
- 6 A. Well, I don't really know what you mean by
7 that.
- 8 Q. That's fine. Did you discuss with Miss Sneath
9 the theory of evolution?
- 10 A. I don't think so.
- 11 Q. Okay. How about the theory of intelligent
12 design theory? Understanding Eric's objection
13 to that, did you discuss that?
- 14 A. I'm sure we probably have.
- 15 Q. Do you recall-- Well, what did you say to Miss
16 Sneath? Can you recall what you said to her
17 about intelligent design theory?
- 18 A. Not specifically, no.
- 19 Q. Okay. Can you recall anything that Miss Sneath
20 said to you about the subject matter of
21 intelligent design theory?
- 22 A. No. Again, I don't recall specific--
- 23 Q. I understand. And that's fine. I'm just
24 trying to learn the facts surrounding the
25 litigation. I'm not asking you to-- How about

1 the plaintiff Julie Smith, do you know Ms.
2 Smith?

3 A. Not personally.

4 Q. Okay. How about plaintiff Aralene also known,
5 I guess, as Barrie D. Callahan, do you know Ms.
6 Callahan?

7 A. I know of her but I do not know her personally.

8 Q. Okay. And Frederick B. Callahan, do you know
9 Mr. Callahan?

10 A. Not personally.

11 Q. Okay.

12 MR. ROTHSCHILD: Patrick, can we go off
13 the record for a moment?

14 MR. GILLEN: Certainly.

15 (A discussion was held off the record.)

16 (A recess was taken.)

17 BY MR. GILLEN:

18 Q. I just wanted to follow up on one question I
19 asked you about your the divorce. What court
20 granted that order of divorce?

21 A. I think it was York County Court.

22 Q. That's fine. But were you a resident in York
23 County when?

24 A. Yes.

25 Q. Okay. Was your ex-husband also resident in

1 York County when the divorce proceedings took
2 place?

3 A. Yes.

4 Q. Okay. Have you had discussions with members of
5 the board in 2003? By board, I mean the Dover
6 area school board about the subject matter of
7 this dispute?

8 A. In 2003?

9 Q. Yes.

10 A. No.

11 Q. Okay. If we look at 2004, any person who was a
12 member of the school board at any time in 2004,
13 did you have any conversations with a board
14 member?

15 MR. ROTHSCHILD: While they were a member
16 of the board or at any time?

17 MR. GILLEN: At any time.

18 A. Yes, I believe I may have.

19 BY MR. GILLEN:

20 Q. Okay. Who did you speak with?

21 A. It wasn't direct. We were actually in a group
22 of people. I believe it was Casey Brown and
23 Noel Wenrich.

24 Q. Was there more than one discussion or
25 communication with Casey Brown that you had in

- 1 2004?
- 2 A. I don't know if I can recall. I'm not sure.
- 3 Q. Okay. But there was one?
- 4 A. Just in a group of people, yes.
- 5 Q. That's fine. That's a communication. What was
- 6 communicated during that meeting with Mr. Brown
- 7 of which you were a part?
- 8 A. Could you repeat that again?
- 9 Q. What was communicated, what did you talk about
- 10 during that meeting with Mr. Brown of which you
- 11 were a part?
- 12 A. It wasn't Mr. Brown. Mrs. Brown, Casey.
- 13 Q. Oh, I'm sorry, Mrs. Brown.
- 14 A. I'm not exactly sure of the subject matter. I
- 15 think we were just discussing -- it was after a
- 16 board meeting, discussing the board's decision.
- 17 Q. Okay. Do you remember around what time the
- 18 discussion took place in the year?
- 19 A. Either October or November, I'm not sure.
- 20 Q. Do you remember what you said or did you say
- 21 anything in that meeting?
- 22 MR. ROTHSCHILD: I object to the form.
- 23 I'm not sure it's a meeting.
- 24 A. Yeah.
- 25 MR. GILLEN: Okay.

- 1 A. Not that I can recall.
- 2 BY MR. GILLEN:
- 3 Q. Okay. Do you recall anything that Ms. Brown
4 said during the communication?
- 5 A. Again, specifically, I can't recall any
6 statements that--
- 7 Q. That is fine. Believe me, I'm not trying to
8 harass you. If you know, if later on something
9 comes up, I'd like to know what he said at that
10 time. That's all. How about Mr. Wenrich, do
11 you remember anything that Mr. Wenrich said?
- 12 A. The only thing that sticks in my mind is an
13 offhand comment about the board and his comment
14 about being team players or not being team
15 players.
- 16 Q. And just to make sure I understand you, was he
17 saying that the board at this time, which is
18 October or November of 2004, were not team
19 players?
- 20 A. I have no clue what he meant by it.
- 21 Q. Okay. Anything else that was said during that
22 meeting can you recall?
- 23 A. Nothing specifically, no.
- 24 Q. Do you have any tape recordings of any board
25 meetings?

- 1 A. No.
- 2 Q. Did you take notes at any board meetings?
- 3 A. Sporadically.
- 4 Q. Do you have those notes?
- 5 A. I believe I gave Mr. Rothschild an agenda that
6 I may have scribbled -- otherwise, I don't keep
7 them.
- 8 Q. Do you recall what that agenda related to?
- 9 A. I don't recall which one it was specifically.
- 10 Q. You said there was scribblings on it. Is that
11 accurate?
- 12 A. I think I made a few notes, yes.
- 13 Q. Why did you make those scribblings, any
14 particular reason?
- 15 A. Yes, it was when Miss Harkins and Miss Geesey
16 were voted in as new president and vice
17 president of the board.
- 18 Q. Do you recall what you wrote?
- 19 A. I believe I just wrote Harkins Geesey.
- 20 Q. Apart from the agenda with scribblings that
21 you've referenced, is there any other or are
22 there any other notes concerning board meetings
23 or more generally -- well, let me ask you --
24 board meetings?
- 25 A. No. I usually don't keep them.

1 Q. Okay. Have you looked for them?

2 A. I looked through my things, yes.

3 Q. And did your counsel ask you to look for notes
4 relating to board meetings?

5 A. Yes.

6 Q. How about any E-mails, have you communicated
7 with anyone apart from your attorneys in E-mail
8 about the subject matter of this dispute
9 meaning the facts alleged in the complaint?

10 A. Yes.

11 Q. Who?

12 A. Jennifer Miller.

13 Q. Other than Jennifer Miller, have you
14 communicated with anyone in E-mail about this
15 dispute, the facts alleged in the complaint, or
16 matters relating to the biology curriculum?

17 MR. ROTHSCHILD: Just to clarify when you
18 are using communication, are you only referring
19 to communications made by Ms. Kitzmiller or
20 also communications received?

21 BY MR. GILLEN:

22 Q. Communications either way.

23 A. Mr. Baksa E-mailed me.

24 Q. And those I believe have been provided. Apart
25 from those E-mails, are you aware of any other

1 E-mail communications about this dispute?

2 A. Well, would you clarify that, do you mean--

3 Q. Well, when I say this dispute, I mean the facts
4 alleged in the complaint. Let's just start
5 there, I mean--

6 A. Specifically about the facts?

7 Q. About the dispute, about the controversy
8 surrounding the biology curriculum.

9 A. I E-mailed my family to let them know, you
10 know, what was going to happen before the press
11 conference.

12 Q. Okay. Other than those E-mails to your family
13 about -- I take it that's the filing -- the
14 events leading up to the filing of the suit?

15 A. Yes.

16 Q. Other than that, have you communicated with
17 other persons about the subject matter of the
18 dispute -- the controversy surrounding the
19 biology curriculum?

20 MR. ROTHSCHILD: In E-mails?

21 MR. GILLEN: In E-mails first.

22 BY MR. GILLEN:

23 Q. In E-mails.

24 A. Okay. By E-mails though, are you looking for
25 direct -- I directly E-mailed them, they

1 E-mailed me back or--

2 Q. No, I mean just sort of an ordinary
3 communication, people communicating to you, you
4 communicating to them.

5 A. I'm on a mailing list for the NCSE, I believe.
6 I do get E-mails from them.

7 Q. And the NCSE refers to what or who?

8 A. I'm not sure what the specific--

9 Q. Just generally speaking describe what it is.

10 A. National Science Center.

11 Q. Anyone in particular or is it just a list?

12 A. It's a list.

13 Q. My last question about communications with
14 persons about the subject matter of this
15 litigation, facts alleged in the complaint, the
16 controversy surrounding the biology curriculum
17 related to E-mails, have you communicated with
18 anyone else about the dispute that we haven't
19 already talked about?

20 A. Besides lawyers, that's all I can think of
21 right now.

22 Q. And we've mentioned a scribbled agenda, a
23 couple of E-mails which have been produced, are
24 there any other recordings or notes that you
25 can recall as we sit here today relating to

1 this controversy?

2 A. None that I can think of.

3 Q. So to make sure I understand you, you did take
4 notes, but then you just didn't keep them?

5 A. Correct.

6 Q. When you disposed of them, how did you dispose
7 of them?

8 A. I usually shred things.

9 Q. Do you have a shredder in your home?

10 A. No.

11 Q. Where do you shred them?

12 A. Well, I just shred them manually.

13 Q. Oh, you rip them up. That's fine.

14 MR. ROTHSCHILD: Off the record.

15 (A discussion was held off the record.)

16 BY MR. GILLEN:

17 Q. If we go back to the year 2003 and just look at
18 the people that you knew were on the school
19 board, I just want to get a sense for do you
20 have any relationship with them?

21 So I'm asking the board members in 2003,
22 people who were on the school board, were you
23 related to any of them by blood or marriage?

24 A. In 2003, I'm not even sure who exactly was on
25 the school board.

- 1 Q. That's fair enough. How about 2004, is there
2 anyone who's been on the board who you have a
3 relationship to by blood or marriage?
- 4 A. No, not that I would know of.
- 5 Q. And I think we've already gone through this,
6 but I just want to make sure, 2003 members of
7 the board, any friendship acquaintance?
- 8 A. No.
- 9 Q. And 2004 board members, same thing?
- 10 A. No.
- 11 Q. How about just people who have been in the
12 administration for Dover area schools in 2003,
13 do you have any relationship by blood or
14 marriage to any of those persons?
- 15 A. None I know of.
- 16 Q. Okay. And that's fine, too. 2004, any
17 relationship, blood or marriage?
- 18 A. None I know of.
- 19 Q. All right. If we define it a little more
20 broadly to mean employees of Dover Area School
21 District, do you have any relationship by blood
22 or marriage to any employee of Dover Area
23 School District?
- 24 A. None that I'm aware of.
- 25 Q. Any acquaintance with any employee of Dover

- 1 Area School District?
- 2 A. No.
- 3 Q. And 2004, do you have any relationship by blood
4 or marriage to any employee including teachers
5 of the Dover Area School District?
- 6 A. None I'm aware of.
- 7 Q. And I don't want to belabor this point. I just
8 want to make sure I understand your testimony.
9 If we look at board meetings in 2003, did you
10 attend any?
- 11 A. I don't believe in 2003, no.
- 12 Q. And board meetings in 2004, you've attended
13 some. Can you give me an idea of which ones?
- 14 A. To the best of my knowledge, I would say from
15 the end of October through December.
- 16 Q. End or beginning of October?
- 17 A. The end.
- 18 Q. The end. When you say end of October, do you
19 mean before or after October 18?
- 20 A. After.
- 21 Q. Okay. So the first meeting of the Dover school
22 board that you attended was after the October
23 18th, 2004 meeting?
- 24 A. Yes.
- 25 Q. Okay. Did you ever address the school board

1 during the meeting?

2 A. No.

3 Q. Do you know anyone who is a news reporter in
4 the York County area?

5 A. Personally, no.

6 Q. Have you spoken with news reporters in the York
7 County area about -- and let me be more
8 specific -- about the subject matter of this
9 dispute?

10 A. Um, the day of the press conference, I'm not
11 sure who I spoke to. There were so many.

12 Q. Do you recall any names?

13 A. Phew.

14 Q. I'm just trying to get an idea, I mean--

15 A. Um, I believe Laurie Lebo did come over to a
16 few of us. Um, and Heidi -- I'm not sure if I
17 spoke directly with her. I don't know her last
18 name.

19 Q. That's fine. I'm familiar with the sort of
20 strange situation that a press conference is.
21 But you believe you spoke with Laurie Lebo?

22 A. I believe I did at the press conference, yes.

23 Q. And Heidi you're less certain?

24 A. Yeah. She came over. I'm not really sure, I
25 think she spoke more with Cindy and Beth.

1 Q. Did you ever see a report by Laurie Lebo about
2 this dispute that referenced her conversation
3 with you?

4 A. No.

5 Q. I just want to turn back to the complaint,
6 which is Defendants' Exhibit 1 for the purpose
7 of this deposition, and just get a sense for
8 some of your knowledge about the lawsuit
9 generally speaking.

10 If you would direct your attention to
11 numbered paragraph 12, take a moment just to
12 look that over. Have you completed?

13 A. Yes.

14 Q. Thank you. There's a quoted statement there
15 that purports to be a statement of the National
16 Academy of Sciences. I'm just wondering, have
17 you ever seen that statement apart from your
18 review of the complaint?

19 A. I don't believe so.

20 Q. And numbered paragraph number 13, the first
21 sentence there has a definition of theory. And
22 I just have a--

23 MR. ROTHSCHILD: Objection to the form.
24 Mischaracterizes the document.

25 MR. GILLEN: Okay.

1 BY MR. GILLEN:

2 Q. Numbered paragraph 13, the first sentence of
3 that paragraph has a sentence which reads, "In
4 science, the term "theory" has a distinct
5 meaning and does not suggest uncertainty,
6 doubt, or speculation." Are you familiar with
7 that definition of theory apart from looking at
8 the complaint?

9 A. I'm sorry, could you repeat that?

10 Q. Sure. There's a distinct meaning attributed to
11 the word theory. And I'm asking if you're
12 familiar with the meaning apart from the
13 knowledge you acquired from looking at the
14 complaint?

15 A. Yes.

16 Q. Where did you come by that understanding of the
17 term theory?

18 A. I don't specifically know where I came by the
19 understanding. I've just have always heard the
20 term theory associated with science.

21 Q. Okay. But I'm asking you about a specific
22 meaning that's given to the word theory in that
23 first sentence and asking you whether you have
24 seen that meaning of theory apart from the
25 first sentence of the complaint?

1 MR. ROTHSCHILD: Pat, the first sentence
2 doesn't define theory. The second sentence
3 does.

4 MR. GILLEN: Well, I'm just reading what's
5 there. "Theory has a distinct meaning. It
6 does not suggest uncertainty, doubt, or
7 speculation."

8 BY MR. GILLEN:

9 Q. I'm asking you if that meaning attributed to
10 the term theory if you've ever seen that apart
11 from this complaint?

12 MR. ROTHSCHILD: Objection to the form.

13 A. I'm not understanding what you're asking me.

14 BY MR. GILLEN:

15 Q. Okay. And forgive me, I'm just trying to--
16 One of the terms that's been discussed
17 yesterday and today and apparently is part of
18 this litigation is this notion of what's a
19 theory. We've got the theory of evolution.
20 We've got intelligent design theory Mr.
21 Rothschild says is not a theory.

22 In the complaint, a meaning is given to
23 the word theory in that first sentence of
24 numbered paragraph 13. And I'm simply asking
25 you whether you have seen that meaning given to

1 the word theory apart from the complaint?

2 MR. ROTHSCHILD: Same objection.

3 A. I'm still not understanding specifically what
4 you're asking me.

5 BY MR. GILLEN:

6 Q. All right. Let me try and get at it a
7 different way. Do you have an understanding of
8 what theory means as used in connection with
9 science?

10 A. I have a basic understanding.

11 Q. And I'm not asking you for anything more than
12 that. That's all I have. What is your
13 understanding of the word theory?

14 A. My understanding is something that could be
15 tested. And that's all I can think of right
16 now. I--

17 Q. Okay. Let's leave it at that.

18 MR. ROTHSCHILD: Pat, I've been pretty
19 patient here, but Ms. Kitzmiller was not tasked
20 with developing curriculum for Dover School
21 District nor implementing it.

22 And I'm not sure what relevance this line
23 of inquiry into fine details of scientific
24 understanding has to do with this case.

25 MR. GILLEN: I'm just trying to understand

1 the basis for her position and participation in
2 this litigation. The Dover Area School
3 District has decided to make students aware of
4 two theories.

5 Apparently Miss Kitzmiller, among others
6 believes that one of the theories is not a
7 theory. All I'm trying to do is understand why
8 she believes that intelligent design theory is
9 not a theory.

10 MR. ROTHSCHILD: Well, it's a very
11 unproductive line of questioning. I'm going to
12 let you continue asking the questions, but at
13 this pace, you know, this preliminary discovery
14 could last for days and days. I would just
15 request that you cut to the chase. Go ahead.

16 MR. GILLEN: I certainly will endeavor to
17 make it nothing more than what I need to
18 conduct a discovery deposition.

19 BY MR. GILLEN:

20 Q. As Mr. Rothschild has indicated earlier, in
21 numbered paragraph 13 there's a definition of
22 theory that's attributed to the National
23 Academy of Science.

24 Simple question again, apart from looking
25 at this complaint, do you know whether the

- 1 National Academy of Science defines theory in
2 that way?
- 3 A. I would have no clue.
- 4 Q. Numbered paragraph 14 similarly attributes some
5 statements to the National Academy of Sciences
6 concerning the theory of evolution. Have you
7 ever seen that statement of the National
8 Academy of Sciences about evolution apart from
9 looking at the complaint?
- 10 A. No.
- 11 Q. The second sentence of numbered paragraph 14
12 has a statement from the American Association
13 for the Advancement of Science about the
14 contemporary theory of biological evolution.
15 Simple question, do you, apart from
16 looking at the complaint, have any knowledge
17 that the American Association for the
18 Advancement of Science makes that statement?
- 19 A. No.
- 20 Q. Numbered paragraph 15, if you'd take a moment
21 to just look at that quickly, I just want to--
22 Do you have any familiarity with the subject
23 matter of that allegation?
- 24 A. (No response)
- 25 Q. Does that reflect your belief?

1 A. (No response)

2 Q. Forgive me. Let me be more specific. Do you
3 have any knowledge concerning the acceptance of
4 the theory of evolution by the scientific
5 community?

6 A. I would assume it's accepted. It's what is
7 taught in schools.

8 Q. Okay. Apart from that, do you have any other
9 knowledge about the scientific community?
10 Based on your reading, do you have any
11 knowledge about the attitude that the
12 scientific community takes towards Darwin's
13 theory of evolution?

14 MR. ROTHSCHILD: Objection to the form.

15 A. I'm not a scientist. I again would assume that
16 it's--

17 By MR. GILLEN:

18 Q. That's-- I'm sorry. Are you finished?

19 A. I would assume that's how they feel about it.

20 Q. Sure. I understand. Honestly it's not a trick
21 question. I'm just trying to get to the basis
22 for the lawsuit and your role in it. Numbered
23 paragraph 15 goes on to say that the theory of
24 evolution has been attacked on religious
25 grounds. Do you share that belief?

1 MR. ROTHSCHILD: Objection to the form.

2 A. I guess I'm not understanding your question.

3 BY MR. GILLEN:

4 Q. Okay. There's an allegation that the theory of
5 evolution has been attacked by persons who
6 disagree with the theory on religious grounds.
7 And I'm just asking you, do you agree with
8 that?

9 MR. ROTHSCHILD: Object to the form.

10 A. I guess I would have to agree with it.

11 BY MR. GILLEN:

12 Q. Do you have any knowledge concerning persons
13 who attack the theory of evolution on religious
14 grounds?

15 A. I'm not--

16 Q. I mean, again, all I'm trying to do is get to
17 your personal knowledge relating to that
18 allegation.

19 You say you agree with the statement that
20 people attack it on religious grounds. And I'm
21 asking you do you know a person or persons who
22 have attacked it on religious grounds?

23 A. From statements I've read in the paper, I would
24 have to say Mr. Buckingham.

25 Q. That's really all I'm asking you. Apart from

- 1 statements that you've seen in the paper, have
2 you talked to Mr. Buckingham about--
- 3 A. No, I have not.
- 4 Q. Okay. Apart from the statements that you've
5 seen in the paper which we saw a great deal of
6 yesterday, is there any other basis, any other
7 knowledge you have of a person attacking the
8 theory of evolution purportedly on religious
9 grounds?
- 10 A. I'm sorry. I just can't think of anything
11 right now.
- 12 Q. Please don't be sorry. I'm just asking you for
13 your basis for knowledge of specific areas here
14 in the complaint. Do you know anything about
15 Mr. Buckingham's belief about the book of
16 Genesis?
- 17 A. His personal beliefs?
- 18 Q. Yes.
- 19 A. Other than what I've read--
- 20 Q. Is what you've read the sole basis for your
21 knowledge concerning Mr. Buckingham's beliefs?
- 22 A. I think he's been pretty strong about it.
- 23 Q. And the basis for that belief is what you've
24 read in the paper?
- 25 A. Yes.

1 Q. Is there any other basis?

2 A. None I know of.

3 Q. Okay. Is it your recollection that there's
4 something you've seen in the paper with respect
5 to Mr. Buckingham's belief about the creation
6 stories and the book of Genesis?

7 A. I'm sorry, again, I'm not understanding exactly
8 how you're wording your question.

9 Q. Okay, okay. And I'm sorry if my question is
10 unclear. I'm just asking you, you know there's
11 an allegation about the people attacking the
12 theory of evolution based on their religious
13 beliefs about the origin and development of
14 life including but not limited to an acceptance
15 of a literal reading of the creation stories in
16 the book of Genesis.

17 And if I understand you correctly, it's
18 your understanding that Mr. Buckingham is such
19 a person who is attacking the theory of
20 evolution based on his beliefs about the book
21 of Genesis. Is that accurate?

22 MR. ROTHSCHILD: Objection,
23 mischaracterizes the document.

24 MR. GILLEN: Okay.

25

- 1 BY MR. GILLEN:
- 2 Q. Is that your understanding of Mr. Buckingham's
3 reasons for what he did on the school board?
- 4 A. Yes, that's how I understand it.
- 5 Q. And that's based on what you read in the paper,
6 am I correct?
- 7 A. Basically, yes.
- 8 Q. Basically. Is there anything else?
- 9 A. Not that I can think of, no.
- 10 Q. Okay. Apart from this litigation, do you have
11 any knowledge about opponents of evolutionary
12 theory that have attempted to forbid, limit, or
13 otherwise undermine the teaching of the
14 scientific theory of biological evolution in
15 public schools?
- 16 A. (No response)
- 17 Q. I'm just asking-- And we have a situation here
18 in Dover. You've described your impressions
19 with respect to that. What I'm asking you, are
20 you aware of any other disputes that are
21 similar in nature?
- 22 A. I believe there's a case in Georgia.
- 23 Q. Okay. And you think that's similar?
- 24 A. (No response)
- 25 Q. You think that that case is similar to--

1 Excuse me if I was unclear. You think that
2 case in Georgia is similar to the case in which
3 you're a plaintiff?

4 A. No. I don't think it's exactly the same.

5 Q. I understand. Okay. Well, that's all I'm
6 trying to get at. How are they the same and
7 how are they different? Can you tell me why
8 you think they're similar?

9 A. I haven't read a lot about it, so I just know
10 it's a case that does involve evolution.

11 Q. Okay. Apart from that it involves evolution,
12 do you know what happened with respect to
13 evolution in Georgia?

14 A. No, I don't.

15 Q. Okay.

16 MR. ROTHSCHILD: And Patrick, we are so
17 far afield of any area of relevance here--

18 MR. GILLEN: Well, I'm just trying to get
19 the basis for her position. That's all. And I
20 would note, Eric, it's not unlike the questions
21 that were asked to our witnesses yesterday
22 concerning the complaint.

23 I mean, we're trying to establish the
24 personal knowledge relating to the allegations.
25 You did it yesterday; I'm doing it today. I'm

1 not asking her anything-- I mean--

2 BY MR. GILLEN:

3 Q. The next question relates to numbered paragraph
4 17. There's a Supreme Court case there that's
5 referenced. If you'd just look over that case,
6 my question is very simple. Have you ever seen
7 that law case apart from this complaint?

8 A. Not that I know of.

9 Q. Okay. Paragraph 19 relates to intelligent
10 design. And we've talked a little about that
11 already. I just want to ask you if you are
12 familiar with any scientists or authors that
13 critique the theory of evolution from a
14 scientific standpoint?

15 A. I don't have any specific knowledge, no.

16 Q. Okay. There's a reference there to the book Of
17 Pandas and People. And I believe you indicated
18 earlier that you had looked at that book?

19 A. Briefly.

20 Q. Briefly, okay. And that was what I was going
21 to ask you. Did you read it or did you
22 acquaint yourself with it?

23 A. Not the whole book, no.

24 Q. Just describe for me the degree of your
25 familiarity with the text and the subject

- 1 matter that's in the book.
- 2 A. I briefly looked through a few pages, don't
3 specifically remember.
- 4 Q. Did you-- What did you take away from looking
5 at the text? What was -- what knowledge did
6 you gain as a result of your examination of the
7 text?
- 8 A. That the language was way over a 9th grader's
9 level.
- 10 Q. I understand. Have you looked at the Miller
11 and Levine text Biology, the 2004 edition?
- 12 A. Yes.
- 13 Q. Okay. Have you read that -- the sections of
14 the text dealing with evolutionary theory? Did
15 you read those?
- 16 A. No, I didn't.
- 17 Q. Can you say one way or another whether there's
18 a portion of the text that relates to
19 weaknesses in evolutionary theory?
- 20 A. I didn't really read the-- I didn't read
21 everything page by page.
- 22 Q. I understand.
- 23 A. I didn't read it, so I don't know.
- 24 Q. And that's fine. And that's all I'm asking.
25 As we sit here today, are you aware if there is

1 a section of the text that relates to
2 weaknesses in evolutionary theory?

3 A. I don't know.

4 Q. Do you have any-- Have you taken any
5 coursework in theology or philosophy in excess
6 of what you received in high school?

7 A. No.

8 Q. If you would direct your attention to numbered
9 paragraph 20--

10 A. Excuse me, which one?

11 Q. Numbered paragraph 20.

12 A. Okay.

13 Q. There's just a statement there -- an
14 observation, "The existence of such a creator
15 is a central tenet of traditional theistic
16 religions."

17 MR. ROTHSCHILD: Objection,
18 mischaracterizes the document.

19 MR. GILLEN: Okay.

20 BY MR. GILLEN:

21 Q. Do you agree with that statement, "the
22 existence of such a creator is a central tenet
23 of traditional theistic religions"?

24 A. Yes.

25 Q. Okay. Do you have a view-- Well, let me ask

1 you this. Do you have a religious conviction
2 -- do you have religious beliefs just
3 generally?

4 A. I don't really feel that matters.

5 Q. Well, it's -- the subject matter of this
6 litigation has to do with whether someone is
7 imposing religious beliefs. I'm asking you --
8 our clients were all asked what their religious
9 beliefs are. I don't mean to harass you at
10 all. What I'm trying to figure out is do you
11 have--

12 MR. ROTHSCHILD: Patrick, you
13 characterized the controversy exactly right,
14 which is whether anybody, meaning governmental
15 actors, are trying to impose religious beliefs
16 on these private individuals. And I think that
17 was the exact correct characterization of
18 what's going on there.

19 If that's happening -- and that's
20 obviously the subject of dispute in this
21 lawsuit -- then they're doing it regardless of
22 whether the plaintiffs are Jewish or Muslim or
23 Catholic or have no religious faith at all.
24 And their personal religious beliefs don't
25 change that equation.

1 What they're asking is to not have
2 religious beliefs imposed upon them in the
3 school.

4 MR. GILLEN: And that is exactly it, Eric.
5 I'm asking for the basis of the claim that
6 someone's religious beliefs are being imposed
7 on them and vice versa.

8 If there's any basis for a lawsuit that
9 would be designed -- calculated to ensure that
10 instruction in the Dover area school was
11 consistent with an individual citizen's
12 religious beliefs.

13 MR. ROTHSCHILD: I don't understand that
14 at all, Patrick. The issue is are religious
15 views being imposed on private individuals? Is
16 the school through this policy imposing
17 religious beliefs?

18 And I realize we have a lot of ground to
19 cover in terms of whether that's occurring
20 here, whether it's the board's personal
21 religious beliefs or some other religious view
22 that is being imposed on the students in the
23 school classroom.

24 What each of their private religious
25 beliefs are on that subject is irrelevant to

1 whether that is happening.

2 MR. GILLEN: I understand that. This
3 lawsuit, she purports to maintain that Dover
4 area schools is imposing its religious beliefs
5 on her.

6 What I'm trying to find out is whether or
7 not she, through this lawsuit, is trying to
8 make sure that the curriculum at Dover Area
9 High School is tailored to meet her religious
10 beliefs. I can't do that--

11 MR. ROTHSCHILD: There's no allegation of
12 that, Patrick. And she has no ability to do
13 that. She's not a policymaker.

14 MR. GILLEN: If she succeeds in this
15 lawsuit, she'll arguably have succeeded in
16 doing just that.

17 MR. ROTHSCHILD: That is the silliest
18 thing I've ever heard. She is not-- She is
19 saying don't have religion in my classroom.
20 She is not saying have my belief in Judaism or
21 Catholicism or Paganism or whatever she
22 believes in become the subject matter of
23 schools.

24 She has no ability to do that. She's not
25 a policymaker. All she's saying is whatever,

1 you know, don't bring your religious stuff on
2 my students.

3 She has absolutely no ability or authority
4 to impose any religious convictions she has on
5 public school students.

6 MR. GILLEN: What is the allegation then
7 with respect to the imposition of religion?
8 Numbered paragraph 20 calls intelligent design
9 inherently religious.

10 I'm asking her questions to try and get
11 her understanding of what is inherently
12 religious and particularly how she
13 views that in light of her religious belief.

14 MR. ROTHSCHILD: The in light of her
15 religious belief is completely irrelevant. If
16 you want to ask her whether she thinks
17 intelligent design is religious and why she
18 thinks that's so, please go ahead and do it.

19 But whether it-- It may well be
20 consistent with the religious beliefs of Miss
21 Kitzmiller or some others of the plaintiffs.
22 Even if it is consistent, it's still imposing
23 in the public school a religious viewpoint.

24 And it doesn't matter whether any
25 plaintiff agrees with that viewpoint or

1 disagrees with it. The issue is whether it
2 belongs in the public forum as opposed to
3 something that they do in the privacy of their
4 own homes and where it occurs in their own
5 places of worship.

6 MR. GILLEN: Okay. Let me ask her then.

7 BY MR. GILLEN:

8 Q. Do you believe that intelligent design is
9 inherently religious?

10 A. Yes, I do.

11 Q. What is the basis for that belief?

12 A. I feel when they discuss the master intellect,
13 they're referring to God.

14 Q. Okay. And apart from what we discussed
15 earlier, is there any basis for that feeling
16 held by you?

17 A. It's just how I feel.

18 Q. Is the teaching of evolution consistent with
19 your religious beliefs?

20 MR. ROTHSCHILD: Objection.

21 MR. GILLEN: Answer.

22 MR. ROTHSCHILD: Objection, relevance.

23 Her religious beliefs are not at issue. And I
24 might note also that Mr. Thompson objected to
25 any inquiry of Miss Harkins, which, by the way,

1 I do think are relevant here because they're
2 the policymakers imposing religious views on
3 the populous, but he instructed her not to
4 answer those questions.

5 MR. GILLEN: Are you saying that Miss
6 Kitzmiller's are not relevant?

7 MR. ROTHSCHILD: Her religious beliefs and
8 the religious beliefs of the plaintiffs are not
9 relevant.

10 BY MR. GILLEN:

11 Q. Can you tell me then just generally, is the
12 teaching of evolution consistent with your
13 religious beliefs?

14 MR. ROTHSCHILD: Objection, lacks
15 foundation and again it's irrelevant. I just
16 -- I don't see, Patrick, what--

17 MR. GILLEN: Well, I'm trying to
18 understand her perspective on why she would
19 think this curriculum is imposing religious
20 beliefs on her and that it's inconsistent with
21 her -- that her actions in an effort to limit
22 what the board does is not the same thing.
23 That's all I'm trying to understand.

24 MR. ROTHSCHILD: First of all, she has
25 articulated why she thinks intelligent design

1 is inherently religious. She has a very simple
2 formulation. She believes it's talking about
3 God. She said that on a couple of occasions.

4 There is no basis for the suggestion that
5 she is trying through this lawsuit to have the
6 school, the school district, or the school
7 board accept some religious belief that she
8 has.

9 MR. GILLEN: No, that's not what I said.
10 What I said was to ensure that the teaching of
11 science in the Dover Area School District is
12 tailored to meet her religious beliefs as
13 opposed to anyone else's. That's what I'm
14 asking.

15 MR. ROTHSCHILD: And that's-- There is
16 nothing in this complaint to suggest she is
17 seeking that the school curriculum be tailored
18 to meet her religious beliefs. She's saying
19 don't -- this complaint is saying and she is
20 saying don't have religion in school.

21 MR. GILLEN: All right.

22 BY MR. GILLEN:

23 Q. Is it your understanding that religion is being
24 taught in the Dover area public schools?

25 MR. ROTHSCHILD: Through this curriculum

1 item?

2 MR. GILLEN: I just asked her a question.

3 BY MR. GILLEN:

4 Q. Is it your understanding that religion is being
5 taught in the Dover area public schools?

6 A. Well then, I will ask Eric's question, through
7 intelligent design theory?

8 Q. In any way. In any way.

9 A. As it stands now?

10 Q. Yes.

11 A. Before this-- Before the intelligent design
12 policy?

13 Q. No. Right now. Is it your understanding
14 that--

15 A. It's my understanding they are putting
16 religion, yes, into the biology classroom.

17 Q. Okay. And when you say that, what is the basis
18 for that understanding?

19 A. Because they are inserting intelligent design
20 into the curriculum.

21 Q. Okay. All right. Let's look at 23. I just
22 want to get a sense, do you have any knowledge
23 about the Discovery Institute?

24 MR. ROTHSCHILD: After you finish this
25 line of questioning, can we take a break?

1 MR. GILLEN: Sure. No problem.

2 BY MR. GILLEN:

3 Q. I'm looking at numbered paragraph 23 to the
4 complaint. And there's some statements there
5 about the Discovery Institute. I'm just trying
6 to get a sense for whether you know anything
7 about the Discovery Institute apart from what
8 you see in the complaint?

9 A. I've read a little bit about them.

10 Q. What do you know about the Discovery Institute?

11 A. Just that they support intelligent design.

12 Q. Okay. Apart from that, anything else?

13 A. No. That's about all I can think of right now.

14 Q. Okay. How about Phillip Johnson, are you
15 acquainted with any of his work?

16 A. No.

17 Q. Okay. Let's take a break.

18 (A recess was taken.)

19 BY MR. GILLEN:

20 Q. Tammy, I just want to ask you about Of Pandas
21 and People. If I'm correct, you've indicated
22 you looked at it briefly?

23 A. Yes.

24 Q. When?

25 A. I believe approximately November 1st when we

- 1 had our first meeting.
- 2 Q. And I think I know the answer, but I just want
3 to get a sense for why did you decide to look
4 at that text?
- 5 A. I wanted to see what the book was like.
- 6 Q. And any other reason apart from an interest in
7 what the book was like?
- 8 A. (No response)
- 9 Q. For example, a sense it might be used? Is
10 there another reason for you looking at Of
11 Pandas and People?
- 12 A. Well, I think at that time, yes, I think
13 they were talking about how it had been donated
14 to the school.
- 15 Q. Okay. And so was the donation to the school
16 that prompted your curiosity in the text?
- 17 A. No. I think it was probably more because they
18 were going to use it in the classroom.
- 19 Q. And was it your understanding it would be used
20 in the classroom?
- 21 A. Yes.
- 22 Q. Is that your understanding here today?
- 23 A. No. I think from what I understand now it's
24 moved to the library as a reference book.
- 25 Q. Do you have any other understanding about the

- 1 way in which that text might be accessible to
2 students in the Dover Area School District?
- 3 A. No, I don't.
- 4 Q. If you'd just look at the complaint numbered
5 paragraph 28, look it over. Do you have any
6 sense for the way in which curriculum is
7 approved in the Dover Area School District
8 apart from reading that paragraph?
- 9 A. No. My personal knowledge was that this was
10 pretty much how it happened, that the teachers,
11 you know, designed their curriculum and took it
12 to the administration and it was approved.
- 13 Q. Okay. Where did you learn that?
- 14 A. I think it's probably just what I picked up
15 when I was in school.
- 16 Q. Okay. Any specific instances you recall of
17 this sort of process, approving curriculum or
18 text selection?
- 19 A. No.
- 20 Q. Do you have any knowledge concerning whether
21 the procedure described in paragraph 28 was
22 employed with respect to the changes made to
23 the biology curriculum in the Dover Area School
24 District?
- 25 A. I'm sorry, are you asking me is this how I

- 1 think it happened?
- 2 Q. Yes. I should-- Maybe-- I'm trying to make
3 my questions clear. Forgive me. That's
4 basically what I'm asking. Do you think it
5 happened in this way?
- 6 A. No, I do not.
- 7 Q. And that's exactly what I'm asking you. How do
8 you think it was different this time?
- 9 A. I feel the teachers were left out of the
10 process.
- 11 Q. And anything else?
- 12 A. And I'm unaware of a parent community group.
- 13 Q. Anything else?
- 14 A. That's all I can think of right now.
- 15 Q. Okay. And when you say the teachers were left
16 out of the process, I'm just trying to get a
17 sense for what do you mean?
- 18 A. Well, I feel their concerns were not addressed.
- 19 Q. And when you say their concerns, what concerns
20 are you referencing?
- 21 A. Their concerns for the intelligent design.
- 22 Q. And just to be a little more specific, what
23 teacher concern with respect to intelligent
24 design are you aware of?
- 25 A. I'm sorry?

- 1 Q. You have a sense that the teachers' concerns
2 were not taken into account in the process.
3 And I'm just trying to get a sense for when you
4 say teacher concerns, what do you mean?
- 5 A. Well, I feel the science department did not
6 stand behind this, did not approve of it. And
7 their concerns were not at all -- well, I
8 wouldn't say not at all -- they just weren't
9 considered.
- 10 Q. You know what, let me just try and be more
11 precise what I'm getting at. When you say
12 weren't considered, do you mean as you
13 understand it the end result of this process
14 was not just as the teachers would have it?
- 15 A. Yes.
- 16 Q. Okay. And when there's this area of divergence
17 between what you understand as the teachers'
18 concerns and the end result of the process,
19 what are those areas of divergence? Do you
20 know what the areas of divergence are?
- 21 A. Could you rephrase that, please?
- 22 Q. Sure. And, you know, part of it's the legal
23 way of communicating. Forgive me.
- 24 A. Exactly.
- 25 Q. You have a sense that the net result of these

1 deliberations by Dover Area School District is
2 inconsistent with teacher concerns. And all
3 I'm trying to do is get your understanding for
4 how the net result of this process is
5 inconsistent with the teacher concerns.

6 A. I feel the teachers went to the board or to the
7 administration stating their concerns, and the
8 end result is intelligent design will be in the
9 classroom.

10 Q. Okay. Apart from that, is there anything else,
11 any other difference between the net result of
12 the policy as you understand it and the teacher
13 concerns?

14 A. I'm not sure what you mean by that. That's--

15 Q. Well, you've mentioned your sense that
16 intelligent design will be in the classroom.
17 I'll ask you a few questions about that later.

18 But for present purposes, I'm just
19 wondering whether apart from that statement, is
20 there anything else that you think is a way in
21 which teacher concerns were not considered?

22 A. I don't know.

23 Q. Okay. That's a good answer. That's fine. I'm
24 just trying to understand the basis of your
25 position.

1 You mentioned also a parent community
2 group. And I believe you said -- forgive me if
3 I'm wrong -- you're unaware of a parent
4 community group.

5 I just want to get a better understanding
6 what you mean by that. When you say parent
7 community group, what exactly do you have in
8 mind?

9 A. My understanding would be that there for the
10 board -- for the curriculum committee, there is
11 a parent and/or community group made of -- that
12 would give their recommendations to the board
13 as well.

14 Q. Okay. And do you have an understanding
15 concerning whether -- let's just call it the
16 parent community group gave or the board
17 received the input of a parent community group?

18 A. I'm unaware of--

19 Q. Okay. And again, we're looking generally at
20 the process of curriculum approval and so on.
21 And you've mentioned two things, the sense that
22 the teachers' concerns were not taken into
23 consideration and the -- a notion that a parent
24 community group, their thoughts weren't
25 consulted.

1 Apart from those two things that we've
2 talked about, is there any other understanding
3 you have of how curriculum is approved that was
4 departed from in this instance as far as you
5 know?

6 A. I'm not an expert on the process.

7 Q. That's fine. I understand. I'm just trying to
8 understand. This will hopefully move us along
9 a little more.

10 I just want to get numbered paragraph 29.
11 It says, "This controversy began with a dispute
12 over the purchase of a textbook for use in
13 Dover High School biology classes."

14 Are you aware of recommendations from the
15 teachers or the administration with respect to
16 the purchase of a textbook for use in Dover
17 High School biology classes?

18 A. I'm not understanding.

19 Q. Okay. Do you know if there's a statement here
20 -- I can't testify, but it's true -- this is --
21 this dispute, one facet of it relates to a
22 textbook selection.

23 And I'm asking you do you know anything
24 about the textbook that was recommended by the
25 teachers and administration of Dover area

1 schools to the board?

2 A. (No response)

3 Q. Do you know which book?

4 A. I'm assuming it's the book my daughter has.

5 Q. Okay. And you've looked through that book, I

6 believe you said earlier?

7 A. Yes, I've looked through it.

8 Q. Okay. That's-- Are you familiar with the

9 authors or can you describe the book or--

10 A. (No response)

11 Q. If I said to you are you familiar with the text

12 of Miller and Levine Biology, Prentice Hall

13 2004, have--

14 A. I'm familiar with the book. I have not read it

15 word for word.

16 Q. Okay. You said your child was given. Is that

17 the child who's in the 9th grade?

18 A. Yes.

19 Q. Do you know whether that book is the book that

20 was recommended by the teachers and

21 administration?

22 A. I'm not aware if it is the exact book.

23 Q. Okay. If you'd look at paragraph 29, there's a

24 statement attributed to school board member

25 William Buckingham. I think I know the answer

1 to this, but I need to ask.

2 That statement is said to have been made
3 at a June 7, 2004 meeting of the school board.

4 Were you at that June 7, 2004 meeting?

5 A. No.

6 Q. Have you ever heard Mr. Buckingham make that
7 statement?

8 A. Personally, no.

9 Q. Okay. You say personally, no. Have you ever
10 seen that statement attributed to Mr.

11 Buckingham?

12 A. Yes, I have.

13 Q. Okay. Where?

14 A. In the newspaper.

15 Q. Apart from the newspaper reporting, have you
16 ever seen that statement attributed to Mr.

17 Buckingham?

18 A. In the complaint.

19 Q. Okay. And the complaint.

20 A. Yes.

21 Q. Forgive me if I belabor this, but I need to
22 find out if there's any personal knowledge
23 regarding these things that you have.

24 If you look through paragraph 29, there's
25 a sentence that says at that meeting, meaning

1 the June 7th, 2004 meeting, Mr. Buckingham said
2 that he was looking for a new biology book, one
3 that offers a balance between the biblical view
4 of creation and Darwin's theory of evolution.
5 My question is simple, did you ever hear Mr.
6 Buckingham say that?

7 A. Personally, no.

8 Q. Okay. You say personally no--

9 A. In person, no.

10 Q. Right. Have you seen that statement attributed
11 to Mr. Buckingham?

12 A. Yes.

13 Q. Where?

14 A. Again--

15 Q. Apart from the complaint.

16 A. --I would assume in the newspaper.

17 Q. So you say I would assume, are you certain that
18 you've seen that statement attributed to Mr.
19 Buckingham apart from the complaint?

20 A. Worded the way it is, I'm not certain.

21 Q. And that's fair enough. The thrust of that
22 comment?

23 A. Yes, I would say the meaning of it.

24 Q. Yes. And apart from the newspaper clippings,
25 is there any other source for your belief that

1 he made such a statement?

2 A. No.

3 Q. Let me see if I can shorten this. There's some
4 other statements in the remainder of paragraph
5 29 attributed to Mr. Buckingham. I believe you
6 said you haven't spoken with him personally?

7 A. Correct.

8 Q. And have you heard anything that he's said
9 personally?

10 A. (No response)

11 Q. Have you been in a room where Mr. Buckingham
12 has made a statement that you've heard?

13 A. Board meetings.

14 Q. Now, that's my difficulty. There's a statement
15 in here -- otherwise, I'd wrap this up as soon
16 as I could -- there's a statement in here that
17 Mr. Buckingham said there need not be any
18 consideration for the beliefs of Hindus,
19 Buddhists, Muslims, or other competing faiths
20 and views. Did you ever hear Mr. Buckingham
21 say that?

22 A. No.

23 Q. And there's the final quoted statement: This
24 country wasn't founded on Muslim beliefs or
25 evolution." He said, "This county was founded

- 1 on Christianity and our students should be
2 taught as such." Did you ever hear Mr.
3 Buckingham say that?
- 4 A. No.
- 5 Q. Apart from newspaper reports, did you ever see
6 such statements, the ones we've just read,
7 attributed to Mr. Buckingham?
- 8 A. Besides--
- 9 Q. Besides newspaper reports.
- 10 A. No.
- 11 Q. Okay. Paragraph 30 relates to the June 14th,
12 2004 meeting. And I understand from your
13 testimony -- correct me if I am wrong -- that
14 you weren't at that meeting.
- 15 A. No, I was not.
- 16 Q. Okay. There's a statement there if you'd just
17 look at it, Tammy, it's, "Two thousand years
18 ago, someone died on a cross. Can't someone
19 take a stand for him?" Did you ever hear Mr.
20 Buckingham say that?
- 21 A. No.
- 22 Q. Apart from newspaper reports, have you ever
23 seen that statement attributed to Mr.
24 Buckingham?
- 25 A. No.

1 Q. And there's a last sentence there, if you'd
2 just look at that in numbered paragraph 30,
3 another statement attributed to Mr. Buckingham.
4 The same questions, did you ever personally
5 hear him say that?

6 A. No.

7 Q. And did you see it in the newspaper sometime do
8 you believe? I mean, I guess I should ask
9 that.

10 A. I think I may have. I'm not sure.

11 Q. If you did, was it in the newspaper or do you
12 recall where you saw it?

13 A. If I did see it, it would probably have been in
14 the newspaper.

15 Q. Okay. I wish I could find a shorter way to do
16 this. But numbered paragraph 31 references
17 certain events and statements at the August
18 2nd, 2004 board meeting.

19 And there's a statement attributed to Mr.
20 Buckingham to the effect that he would vote
21 down the purchase of Biology -- that's a
22 reference to the Miller and Levine text --
23 unless the school board also bought Of Pandas
24 and People: The Central Question of Biological
25 Origin. Did you ever hear Mr. Buckingham make

- 1 a statement like that?
- 2 A. No.
- 3 Q. And I'm correct that you didn't attend that
4 meeting. Correct?
- 5 A. Correct.
- 6 Q. All right. Numbered paragraph 32 relates to a
7 donation of 50 -- let's say 50 or 60 copies of
8 Of Pandas and People to the Dover High School
9 science classroom. Is it your understanding
10 that such a donation has been made?
- 11 A. Yes.
- 12 Q. How do you know that?
- 13 A. I've read it in the newspaper and I've heard
14 people speak of it at board meetings.
- 15 Q. Okay. In numbered paragraph 34 it speaks to
16 the participation of the district science
17 faculty, sort of two elements of that.
- 18 And I think we've spoken about this -- the
19 resolution was developed without the
20 participation of the district science faculty.
21 Earlier you mentioned that the teachers--
22 Well, let me ask you, do you agree with that
23 statement?
- 24 A. Yes.
- 25 Q. And let me just see if I can clarify. I mean,

1 it says the participation of the district
2 science faculty. Now, there's participation in
3 the process and then there's the end result.

4 I just want to get a sense for this, I
5 mean, is it your understanding that the
6 district science faculty didn't participate at
7 all in this process?

8 A. No, they participated.

9 Q. Okay. So the area in which you think there was
10 a departure from process -- and correct me if
11 I'm not capturing your thoughts -- is that the
12 net result of the process was different -- the
13 end result. In other words, as you said
14 earlier, teachers brought their concerns to the
15 board and so on.

16 A. Yes.

17 Q. So they participated, they provided input. But
18 what's apparently at issue here is the notion
19 that the end result was not consistent with the
20 district science faculty's position as you
21 understand it. Is that true?

22 A. That's how I understand it.

23 Q. Okay. And then there's an allegation there
24 about the resolution -- and we're speaking
25 about the curriculum -- was opposed by the

- 1 faculty when they found out about it. Is that
2 your understanding?
- 3 A. Yes, that's my understanding.
- 4 Q. And what is the basis for your understanding
5 that way? I mean, have you talked to any of
6 the teachers--
- 7 A. No, I haven't.
- 8 Q. --about it? Okay. So your basis for your
9 understanding of the position of the district
10 science faculty, I mean, what is your
11 understanding of their position?
- 12 A. My understanding is they did not want
13 intelligent design inserted into the
14 curriculum.
- 15 Q. Apart from that, is there anything -- do you
16 have any other understanding about a way in
17 which the wishes of the district science
18 faculty was not -- were not satisfied by the
19 board's action?
- 20 A. You know, at this time, all I feel they
21 certainly opposed it.
- 22 Q. Okay.
- 23 A. I don't think there's any more that needs to be
24 said.
- 25 Q. Okay. And when you say opposed, do you mean

1 opposed inserting intelligent design into the
2 curriculum?

3 A. Yes.

4 Q. From my standpoint, I'm kind of shooting in the
5 dark. For example, do you have an
6 understanding as to whether or not the district
7 opposed putting Of Pandas and People in the
8 library?

9 A. (No response)

10 Q. I mean, that's the sort of thing I'm getting
11 at. Do you have an understanding relative to
12 that?

13 A. I have no knowledge.

14 Q. Okay. And that's all I'm trying to learn,
15 honest to God. It's not a game. I know you're
16 aware of some of their considerations. I'm
17 trying to figure out what they are and ask you
18 how you believe they diverge because--

19 There's some other-- Let me just see
20 here. If we look at paragraph 35, that
21 references a vote on the resolution. And you
22 said, if I'm correct, that you were not at the
23 October 18, 2004 meeting?

24 A. Correct.

25 Q. Did you ever speak with anyone who's identified

1 in numbered paragraph 35 about the October 18th
2 meeting or their votes?

3 A. No.

4 Q. Okay. The reason for their votes?

5 A. No.

6 Q. Paragraph 36 contains a statement from Carol
7 Brown noting that other school board members
8 had asked her if she was born again.

9 Again, I think I know but I just want to
10 make sure, did Carol Brown ever tell you
11 someone on the school board made that statement
12 to her?

13 A. Not that I can recall.

14 Q. Have you heard anything about anyone else in
15 the community making a statement to that
16 effect?

17 A. I'm sorry, you're asking me if I've ever heard
18 anybody else--

19 Q. --in the community making a statement. Your
20 question is -- your request for clarification
21 is good. Are you aware of or have any
22 knowledge of anyone else in the community
23 making a statement to Carol Brown that asked
24 her if she had been born again? Have you heard
25 anything about that?

1 A. Not that I know of.

2 Q. Let me just ask you generally, are you aware of
3 any statements, hearsay statements or whatever,
4 made to any of these members of the school
5 board in 2004 asking them about their religious
6 convictions or their -- whether they believe
7 they've been born again or things of that
8 nature?

9 Have you heard any scuttlebutt, if you'll
10 forgive me, about people in the community
11 asking school board members those sorts of
12 questions?

13 A. I don't recall any conversation. At this time
14 I can't think of anything other than, you know,
15 when it had been in the paper.

16 Q. And that's fine. And that's not what I'm
17 asking for. The statements in the paper figure
18 prominently here. But what I'm trying to get a
19 sense for is if you've heard anything about it,
20 like friends or neighbors or people walking up
21 to school board members and making these kinds
22 of statements.

23 By kinds of statements, I mean making
24 inquiry into the religious beliefs or religious
25 convictions of people who were on the board at

1 some time in 2004. Have you heard anything
2 about that?

3 A. (No response)

4 Q. If you haven't--

5 A. I don't really know, that's what I'm trying to
6 say. I don't really know.

7 Q. Okay. As we sit here today, you don't recall
8 any -- please forgive me if I mischaracterize
9 your testimony -- you don't recall any
10 information of that kind. Is that true?

11 A. Yes.

12 Q. Okay.

13 (A recess was taken.)

14 BY MR. GILLEN:

15 Q. Tammy, do you have an understanding whether the
16 school board is obliged to comply with the
17 recommendation of the district science faculty
18 when they draft the biology curriculum?

19 MR. ROTHSCHILD: I object to the word
20 obliged. Do you mean required?

21 MR. GILLEN: Yes, required.

22 A. Are they required?

23 BY MR. GILLEN:

24 Q. Yes.

25 A. I wouldn't know.

1 Q. Okay. Do you think that they're required?

2 MR. ROTHSCHILD: Objection, asked and
3 answered.

4 A. I have no clue.

5 BY MR. GILLEN:

6 Q. Okay. Do you know whether the teachers were
7 threatened with litigation?

8 MR. ROTHSCHILD: About what?

9 BY MR. GILLEN:

10 Q. Litigation about the biology curriculum.

11 A. I have no knowledge of that.

12 Q. Let me just ask you a general question as we
13 start this final portion of your deposition
14 which is this, what is your understanding or do
15 you have be an understanding concerning the
16 purpose of the biology curriculum resolution
17 that was adopted by the Dover Area School Board
18 on October 18, 2004?

19 A. I have no understanding what the purpose was.

20 Q. Okay. Do you have any belief or--

21 A. I believe, yes, it was religious.

22 Q. Okay. And when you say you believe it was
23 religious, can you be more specific, in what
24 sense was it a religious purpose?

25 MR. ROTHSCHILD: Objection.

1 MR. GILLEN: Okay.

2 MR. ROTHSCHILD: Just careful about the
3 use of the words purpose. I mean, she said she
4 doesn't know the purpose. She believes it's
5 religious.

6 MR. GILLEN: Right.

7 A. Right. It's my belief just because of
8 statements that were made during the biology
9 curriculum development that it was religious in
10 nature.

11 BY MR. GILLEN:

12 Q. And when you say that it was religious in
13 nature, are you referring--

14 A. To the policy.

15 Q. Okay. Apart from the-- Well, when you say
16 religious in nature, can you be more specific?
17 Is there a part of the policy that you believe
18 is religious in nature?

19 MR. ROTHSCHILD: Objection to the form.

20 A. It's my feeling--

21 MR. ROTHSCHILD: Go ahead.

22 A. --the whole policy is.

23 BY MR. GILLEN:

24 Q. Do you know what, let's do this, I want to mark
25 some documents.

1 (Defendants' Deposition Exhibits #2
2 through 4 were marked for identification.)

3 BY MR. GILLEN:

4 Q. If you would, Tammy, four from the back of
5 Defendants' Exhibit 3, if you would direct your
6 attention to the last day that's listed on that
7 page.

8 You'll see the portions of the curriculum
9 policy which I will represent to you are the,
10 you know, what we've been talking about all
11 day.

12 If you look in the row entitled unit
13 content/concepts/process, at the bottom of that
14 row you'll see a paragraph that says, "Students
15 will be made aware of gaps/problems in Darwin's
16 theory and of other theories of evolution
17 including but not limited to intelligent
18 design." At the foot of the page, there's a
19 note The Origins of Life is not taught.

20 If you look across to the fifth column on
21 that page headed materials and resources, look
22 down to the bottom of that column, you'll see a
23 reference to the text Of Pandas and People.

24 And I'd like to ask you, you say the
25 policy is religious in nature. And this is the

1 policy. And I want to ask you what's your
2 understanding of how this policy, the portions
3 of which I've highlighted for you, is religious
4 in nature?

5 A. Well, as I've stated before, intelligent design
6 I feel pointing to a master intellect is
7 referring to God.

8 Q. Okay. So there's a couple of things that
9 you've referenced I'd like to ask you about.
10 The first portion of the paragraph at the foot
11 of the column entitled unit concept/concepts
12 says that students will be made aware of
13 gaps/problems in Darwin's theory and other
14 theories of evolution.

15 Let me take that back. It's students will
16 be made aware of gaps/problems in Darwin's
17 theory. Do you see that portion of the
18 curriculum as religious in nature?

19 A. No.

20 Q. Okay. And it's not a trick question. I'm just
21 asking you -- I want to get your sense for what
22 the problem is here.

23 And then it says students will be made
24 aware of -- it goes on to say other theories of
25 evolution including but not limited to

1 intelligent design.

2 It seems to me that it's the reference to
3 intelligent design which you believe makes the
4 policy religious in nature?

5 A. Yes.

6 Q. Is there anything else?

7 A. Besides the fact that I feel it's bad science?

8 Q. Well, I mean, I don't want to get into, like,
9 what's good science and junk science and all
10 that. I'm just focused on your sense that
11 intelligent design or the curriculum's purpose
12 was religious in nature.

13 MR. ROTHSCHILD: And Patrick, right now
14 are you just focusing her on the content that's
15 in the unit content?

16 MR. GILLEN: Yes.

17 BY MR. GILLEN:

18 Q. I just want to see what portion of that
19 paragraph reflects your understanding that the
20 curriculum change which was made by the Dover
21 Area School District on October 18, 2004 and
22 reflected in this document is religious in
23 nature.

24 A. Yes. As I believe I've already stated, the
25 intelligent design portion.

1 Q. That's fine. And I'm just asking you, is there
2 anything else apart from this paragraph that's
3 in the curriculum according to your
4 understanding that you believe is religious in
5 nature?

6 MR. ROTHSCHILD: So now the question
7 includes everything on the page including the
8 materials?

9 MR. GILLEN: Right. Yes. Right.

10 A. Yes, Of Pandas and People.

11 BY MR. GILLEN:

12 Q. Okay. And just -- I think you've said this,
13 but I want to make sure I understand. What is
14 it about Of Pandas and People that you believe
15 is religious in nature?

16 A. As I've stated before, the reference to a
17 master intellect, again, I feel means God.

18 Q. Okay. Fair enough. Anything else?

19 A. No. I think I've already stated that.

20 Q. I just want to make sure I'm clear because
21 we're wrapping up here, believe it or not.
22 Now, if you would, I'd ask you to direct your
23 attention to Defendants' Exhibit 2.

24 If you look at the back of that-- That's
25 the answer. And if you look at the back two

1 pages, you'll see a very dark tab that says
2 Exhibit 1. And that document is entitled board
3 press release for biology curriculum 11/19/04.

4 And I would like to direct your attention
5 to the indented two paragraphs at the bottom of
6 the first page of that exhibit and the indented
7 two paragraphs at the top of the next page and
8 ask you to please look those over.

9 Okay. Now, if you look at-- Well, tell
10 me, are there any portions of those indented
11 paragraphs that I directed your attention to
12 that in your understanding show that the policy
13 is religious in nature?

14 A. Again, it refers to intelligent design and the
15 book Of Pandas and People.

16 Q. Okay. So is it the reference to intelligent
17 design that you believe makes the curriculum
18 religious in nature?

19 A. Yeah, I think I've already stated that.

20 MR. ROTHSCHILD: Objection to form.

21 MR. GILLEN: Okay.

22 BY MR. GILLEN:

23 Q. If you look back at Defendants' Exhibit 3, and
24 we look at that bottom paragraph we looked at
25 before, there's a reference to students will be

1 made aware of other theories of evolution
2 including but not limited to intelligent
3 design.

4 Are there any other theories that you're
5 aware of that provide a basis for your sense
6 that the curriculum change is religious in
7 nature?

8 MR. ROTHSCHILD: Objection.

9 BY MR. GILLEN:

10 Q. I understand that you've mentioned intelligent
11 design. Are there any other theories that you
12 understand will be referenced?

13 A. I'm not aware of what the other theories are.

14 Q. So that's all I'm trying to be clear on. Is it
15 the reference to intelligent design alone that
16 you believe makes the curriculum change
17 religious in nature?

18 MR. ROTHSCHILD: Objection.

19 A. I believe I've stated that before.

20 BY MR. GILLEN:

21 Q. Okay. Do you have a-- Is there just-- Do you
22 have a problem of the presentation of any other
23 theories besides Darwin's theory of evolution?

24 MR. ROTHSCHILD: Objection. She already
25 stated she doesn't know what the other theories

1 are.

2 BY MR. GILLEN:

3 Q. But do you object to them being exposed to a
4 panoply of theories?

5 MR. ROTHSCHILD: Objection.

6 A. I would have to see what the other theories
7 are. There are no other theories defined in
8 this.

9 BY MR. GILLEN:

10 Q. Okay, okay. That's fair. Do you have an
11 understanding concerning whether intelligent
12 design will be taught in Dover area schools?

13 A. I don't know what will be taught in the
14 classroom. I'm assuming it will be. It's part
15 of the curriculum.

16 Q. And when you assume that and say it's part of
17 the curriculum, when you assume it will be
18 taught, what are you assuming? I mean what do
19 you envision?

20 A. I can't-- I can't really say. I don't know.

21 Q. Okay. That's fair enough. Let me ask you
22 this. I'm going to represent to you that the
23 Dover Area High School teachers have been
24 instructed not to teach intelligent design in
25 the classroom.

1 MR. ROTHSCHILD: Objection.

2 BY MR. GILLEN:

3 Q. If that were the case, would you still believe
4 that the curriculum was religious in nature?

5 MR. ROTHSCHILD: I object to the
6 hypothetical because it improperly
7 characterizes the facts.

8 MR. GILLEN: Okay.

9 BY MR. GILLEN:

10 Q. Just answer the question.

11 A. It is part of the curriculum.

12 Q. You say it's part of the curriculum. Is it
13 your belief that the reference to intelligent
14 design makes the curriculum religious in
15 nature?

16 MR. ROTHSCHILD: Objection, asked and
17 answered. You can answer.

18 A. I've stated it before.

19 BY MR. GILLEN:

20 Q. Okay. And you've referenced that you've
21 discussed the reference to intelligent design
22 in the curriculum.

23 Do you have any understanding whether the
24 students see the document that's marked
25 Defendants' Exhibit 3, Dover Area School

1 District biology planned course/curriculum
2 guide?

3 A. I'm not aware if they do. I'm sure they can
4 get it off the website.

5 Q. So if they got it off the website and looked at
6 that-- Well, did you get it off the website?

7 A. I looked at the curriculum on the website, yes.

8 Q. Okay. If you-- You've advanced a number of
9 claims here including a free exercise claim.
10 And I just want to get an understanding for how
11 -- what's -- how do you think that the Dover
12 area school curriculum interferes with your
13 exercise of religion?

14 MR. ROTHSCHILD: Objection, asks for a
15 legal conclusion. Can you explain what you
16 mean by your free exercise assertion, Patrick?

17 MR. GILLEN: I think it's Count II.

18 MR. ROTHSCHILD: Which clause are you
19 referring to?

20 MR. GILLEN: Count II. Well, the coerced
21 religious practice.

22 BY MR. GILLEN:

23 Q. I'm just trying to get a sense for the ways in
24 which, if any, you think that the Dover Area
25 School District curriculum policy with respect

1 to biology interferes with your free exercise
2 of religion.

3 MR. ROTHSCHILD: Objection, seeks legal
4 conclusion. Objection, mischaracterizes the
5 complaint.

6 BY MR. GILLEN:

7 Q. Is there any specific way?

8 A. I'm still a little confused because I'm trying
9 to--

10 Q. And it is kind of legal. I'm not asking you to
11 know the law as Mr. Rothschild's suggestion
12 indicates. I'm really just asking for your
13 practical sense as a parent, the parent of a
14 child who's going to be in the classroom how in
15 your understanding does the Dover area biology
16 curriculum interfere with your religious
17 beliefs?

18 MR. ROTHSCHILD: I object to the question.
19 And again, I think any inquiry into Miss
20 Kitzmiller's religious beliefs are
21 inappropriate and irrelevant.

22 If you're asking her how this curriculum
23 imposes religion on her or her child, I'll
24 allow her to answer that question. But again,
25 you know, we've gone down this road before and

1 I don't see how her personal religious beliefs
2 are implicated.

3 MR. GILLEN: I'm not even-- I'm sorry.

4 MR. ROTHSCHILD: Are implicated in this
5 lawsuit. And I take it you're drawing this
6 from the statement coerced religious practice?

7 MR. GILLEN: What' I'm-- Those claims are
8 advanced under Pennsylvania's free exercise of
9 religion clause. And what I'm asking is what
10 is the burden on her exercise of religion that
11 is created by the Dover area biology
12 curriculum? That's an inquiry in every case
13 that has to do with free exercise.

14 BY MR. GILLEN:

15 Q. I'm asking what is your understanding
16 concerning the burden on your religious
17 practice?

18 MR. ROTHSCHILD: I object to the question,
19 but I'll allow you to answer that. What is the
20 burden-- What burden, if any, is there on your
21 private -- any private religious practice you
22 have?

23 A. Well, I feel that's my choice at home not and
24 it shouldn't be brought up in the science
25 classroom.

1 BY MR. GILLEN:

2 Q. Okay. And when you say it shouldn't be brought
3 up in the science classroom, what are you
4 referring to?

5 A. Any type of religion.

6 Q. And when-- Do you have an understanding that
7 religion will be brought up in the science
8 classroom?

9 A. As I've stated before, yes, with intelligent
10 design.

11 Q. Okay. So now, if we can return our attention
12 to Exhibit 1 -- to Defendants' Exhibit 2 in
13 this deposition, Exhibit 1 to the answer, which
14 is that biology curriculum press release -- and
15 you'll see I've asked you to look earlier at
16 four indented paragraphs.

17 And I'm representing to you that those
18 four paragraphs are the net result of the
19 biology curriculum change for in-classroom
20 instruction.

21 That is to say, that statement will be
22 read at the beginning of the biology class that
23 is devoted to a discussion of Darwin's theory
24 of evolution.

25 And my question to you is simple, do you

1 believe that the reading of that four-paragraph
2 statement is religious in nature?

3 MR. ROTHSCHILD: And nothing else?

4 MR. GILLEN: Yes, the four-paragraph
5 statement.

6 MR. ROTHSCHILD: It's asked and answered,
7 but you can answer.

8 MR. GILLEN: No, I've asked her this time
9 whether the reading of this four-paragraph
10 statement in the classroom is religious in
11 nature.

12 MR. ROTHSCHILD: Asked and answered, but--
13 A. I feel again, yes.

14 BY MR. GILLEN:

15 Q. Okay. And just explain to me why. Why is the
16 reading of that statement religious in nature?

17 A. Again because it speaks of intelligent design
18 and of the book Of Pandas and People.

19 Q. Okay. So it's the reference to intelligent
20 design and the reference to Of Pandas and
21 People that provides the basis for your belief
22 that this reading of this four-paragraph
23 statement at the beginning of class is
24 religious in nature?

25 A. I believe I've stated that several times.

1 Q. Okay. Is there any other-- Apart from the
2 things we've talked about, is there any other
3 basis in the curriculum change or your
4 understanding of the facts that provides a
5 basis for your claim?

6 MR. ROTHSCHILD: Which claim?

7 BY MR. GILLEN:

8 Q. The claims you advance in this lawsuit, I
9 guess. Is there anything else, practically
10 speaking, that you object to?

11 MR. ROTHSCHILD: I mean, that question is
12 incredibly overbroad, but--

13 BY MR. GILLEN:

14 Q. Okay. Let me just ask, you've agreed-- You're
15 a plaintiff in this litigation. And I take it
16 that you object to this change to the biology
17 curriculum?

18 A. Yes.

19 Q. And we've talked about Defendants' Exhibit 3,
20 which is the biology curriculum. It includes
21 the reference -- the text that we've discussed.
22 And then we've talked about Defendants' Exhibit
23 2, the answer, and Exhibit 1 to Defendants'
24 Exhibit 2, which is the press release. And
25 that sets forth this four-paragraph statement.

1 And I understand from your testimony --
2 please correct me if I am wrong -- that it's
3 these things that we've talked about, the
4 change in the curriculum goal, the reference to
5 Of Pandas and People, and the reading of the
6 four-paragraph statement that provide the basis
7 for your objections to the Dover Area School
8 District biology curriculum.

9 MR. ROTHSCHILD: I object, Patrick. That
10 mischaracterizes her testimony. She also
11 talked about statements by the board.

12 MR. GILLEN: Okay. I'm asking in terms of
13 the policy not the statements. I'm asking her
14 about what, you know, what she sees the effect
15 of that policy. And let me clarify if
16 necessary.

17 BY MR. GILLEN:

18 Q. What are the consequences of the Dover Area
19 School District policy that you object to?

20 A. (No response)

21 Q. Just how are you harmed is what I'm trying to
22 get at. What is the harm, the basis for your
23 objection?

24 A. I'm still not quite understanding your
25 question. If you could just clarify that.

1 Q. I'll try. I certainly will. I'm really just
2 asking you -- I know you're a parent and a
3 student of the Dover Area School District. A
4 change has been made to the curriculum, and you
5 object to it. You feel you have been harmed.
6 I understand that.

7 And I just want to make sure that I
8 understand the basis for your objection and
9 your sense of harm. And we've talked about
10 these -- the policy change that is the subject
11 matter of this lawsuit.

12 And as far as I know, I've directed your
13 attention to all of the elements -- all of the
14 consequences, all of the effects of that
15 change. And I just, I want to -- you to
16 explain to me in simple terms how you believe
17 you are harmed by that.

18 MR. ROTHSCHILD: I object to the form.

19 MR. GILLEN: Okay.

20 MR. ROTHSCHILD: You can answer.

21 A. Again, I've stated, I feel it's bringing
22 religion into classroom where it should not be.
23 It's harming my daughter's education.

24 BY MR. GILLEN:

25 Q. Okay. That's fair. I understand that. Is it

1 your understanding that Of Pandas and People is
2 going to be in the classroom?

3 A. Originally, yes. The latest I've heard it will
4 be in the library.

5 Q. Okay. If the book is in the library, do you
6 believe you're harmed by the book being in the
7 library?

8 MR. ROTHSCHILD: I object to the form.

9 A. I don't feel it should be until the school at
10 all.

11 BY MR. GILLEN:

12 Q. Okay. So in order-- What do you want in that
13 regard then? Do you want the book taken out of
14 the library?

15 A. I feel the whole lawsuit kind of speaks for
16 itself about how I feel.

17 Q. Okay. I understand, but it doesn't. I can ask
18 you questions. I'm just asking you, I mean,
19 with respect to -- we're talking about the text
20 Of Pandas and People.

21 And I'm representing to you that the book
22 is going to be placed in the library. That's
23 the action of the school district. If the book
24 is in the library, do you believe that you are
25 harmed?

1 MR. ROTHSCHILD: I object to the form,
2 incomplete foundation.

3 A. I thought I've already answered that question.

4 BY MR. GILLEN:

5 Q. I don't think that you have. Please answer the
6 question that I've asked.

7 A. Well, I feel I have. I don't feel it should be
8 anywhere in the school at all.

9 Q. Okay. Are you aware of any other books that
10 are in the school library?

11 MR. ROTHSCHILD: Any?

12 A. Any? Yes, several.

13 BY MR. GILLEN:

14 Q. Which books, just generally what books do you
15 know of?

16 A. My daughters bring home many books.

17 Q. Do you have any-- Do you have any sense for
18 the books that are in the library relating to
19 evolution, creationism, intelligent design?

20 A. Not to my knowledge, no.

21 Q. Do you think all of those books should be out?

22 A. No.

23 Q. Why not?

24 MR. ROTHSCHILD: She doesn't know what
25 they are. I mean--

1 BY MR. GILLEN:

2 Q. Well, that's that I'm trying to get. What's
3 the criteria for your sense of harm from the
4 book being in the library?

5 A. If a book is in the library and it relates to
6 evolution, that is a state standard required
7 that has to be taught in the classroom.

8 Q. Okay. So-- And let me ask you. Do you think
9 that any book that's in the library that's not
10 required to be taught by state standards would
11 harm you?

12 A. No.

13 Q. Well then, what is it about this book being in
14 the library that harms you?

15 A. Again, I feel I've already answered that
16 question several times. It's religious in
17 nature and does not belong in the classroom or
18 in the school.

19 Q. So do you think you're harmed by any book that
20 has any religious content in the school
21 library?

22 MR. ROTHSCHILD: Objection, vague and
23 overbroad.

24 MR. GILLEN: I'm just trying to figure out
25 what the objection is to having the book in the

1 library. That's all I'm asking.

2 MR. ROTHSCHILD: It's an incomplete
3 hypothetical.

4 A. Again, I feel I've already answered.

5 BY MR. GILLEN:

6 Q. Okay. Well, let me ask you this. If the book
7 is in the library and your child decides to
8 check it out, would you be harmed? In your
9 opinion, would that be harm?

10 A. I think she would be harmed by trying to read
11 it.

12 Q. And what would that harm be? Just what is
13 the--

14 A. Again, bad science.

15 Q. So-- All right. Let me ask you this. Does
16 she have to look-- Does your child have to
17 look at Of Pandas and People? Do you have an
18 understanding with respect as to whether your
19 child has to look at Of Pandas and People?

20 A. I don't know. I don't know what they--

21 Q. Okay. Do you have an understanding whether the
22 Dover Area School District policy requires
23 students in biology to examine the text Of
24 Pandas and People?

25 A. It's my understanding it can be used as a

1 reference book. They'll be directed to it.

2 Q. When you say directed to it, what do you mean?

3 A. If they have a question, they would be directed

4 -- I guess the teacher would say this book is

5 in the library.

6 Q. And do you know how many books are in the

7 library dealing with this subject matter?

8 A. I have no idea.

9 Q. All right. Just again, if we look at that

10 four-paragraph statement on the Defendants'

11 Exhibit 1, which is the answer, no, Defendants'

12 Exhibit 2, which is the answer. Exhibit 1 to

13 the answer is that press release.

14 And again, if we look back at that,

15 there's the four-paragraph statement. And for

16 the purpose of this deposition, I'm telling you

17 that the effect in the classroom of the policy

18 is to require the reading of that statement at

19 the beginning of the biology class.

20 MR. ROTHSCHILD: Objection to the word

21 effect.

22 MR. GILLEN: Okay.

23 BY MR. GILLEN:

24 Q. And if we assume for the purpose of this

25 question that that's what the net result of

1 this policy in terms of in classroom activity
2 is to read that statement--

3 MR. ROTHSCHILD: Again, object to the
4 form.

5 MR. GILLEN: Okay

6 BY MR. GILLEN:

7 Q. Do you believe you're harmed by the reading of
8 that statement?

9 A. I feel I've answered that one several times.

10 Q. Fine. Now, if I told you that you as a parent
11 can absent your child from the classroom for
12 the time it takes to read that statement, that
13 they can just, you know, be absent, would you
14 still be harmed -- do you believe you'd still
15 be harmed?

16 A. If I pulled my daughter out of the classroom?

17 Q. For the duration of the reading of that
18 statement.

19 A. Yes, she shouldn't need to be singled out of
20 the classroom.

21 Q. So-- And when you say singled out, you mean
22 her exercising -- or you exercising for her or
23 the two of you together exercising the right to
24 step out--

25 A. Yes.

1 Q. --that's singling out?

2 A. Yes.

3 Q. And just let me ask, you have you ever
4 exercised any such option in the Dover Area
5 School District since your child has been
6 enrolled there?

7 A. None that I can recall.

8 Q. All right. How about, for example, with
9 respect to, you know, sex ed or -- apparently
10 these notices go out with respect to a variety
11 of subject matter.

12 A. No. I don't ever recall doing that.

13 Q. Okay. Do you know if your husband has
14 exercised on opt-out -- excuse me -- ex-husband
15 has exercised that option at any time while the
16 students were enrolled in the school?

17 MR. ROTHSCHILD: For her daughters?

18 MR. GILLEN: Yes.

19 A. I would have no idea.

20 BY MR. GILLEN:

21 Q. Okay.

22 MR. ROTHSCHILD: Patrick, how long?

23 MR. GILLEN: Five minutes.

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

25 (A recess was taken.)

1 BY MR. GILLEN:

2 Q. Tammy, just a few more questions to make sure
3 I'm clear. If I told you that intelligent
4 design is not going to be taught in the
5 classroom and that students who make any
6 inquiry will be told good question you can
7 check the library if you like, would you still
8 believe that you are harmed?

9 MR. ROTHSCHILD: Objection to the
10 characterization not being taught,
11 mischaracterizes the evidence. And just to be
12 clear, Pat, I assume in your hypothetical the
13 statement will be read?

14 MR. GILLEN: Right.

15 MR. ROTHSCHILD: This is not -- this is
16 just not happening at all?

17 MR. GILLEN: Yes.

18 BY MR. GILLEN:

19 Q. If I told you that the statement will be read
20 and as you indicated -- and that's why I'm
21 asking -- if a student has a question what's
22 intelligent design, that teacher has been
23 instructed to say good question, there's some
24 material in the library to look into it if
25 you'd like to or you can ask your folks if you

1 want to, if that's the net result of this
2 policy, would you still believe that you were
3 harmed?

4 MR. ROTHSCHILD: Objection to the form.

5 A. I'm not sure I know how to answer that because
6 it hasn't happened.

7 BY MR. GILLEN:

8 Q. That's true. And all you can do is answer the
9 question as I pose it to you which is, if this
10 happens, if the situation is as I've described;
11 namely, the statement is read at the beginning
12 of class, if a student, for example your child,
13 raised her hand and said what is intelligent
14 design and the teacher has been instructed to
15 answer good question, if you're interested in
16 learning about that you can check the library
17 or you can ask your folks but it's not for
18 classroom discussion--

19 MR. ROTHSCHILD: But this statement that's
20 in this press release will have been read?

21 MR. GILLEN: Yes.

22 BY MR. GILLEN:

23 Q. --if that's what happens, will you believe you
24 have been harmed?

25 A. Yes, because I still think it's bringing

1 something into the classroom that does not
2 belong.

3 Q. And when you say bringing something into the
4 classroom that does not belong, what is the
5 bringing in to which you refer?

6 A. Intelligent design.

7 Q. And how is intelligent design brought into the
8 classroom under the circumstances as I've
9 described them? What's the extent of it?

10 A. It's still the statement is being read.

11 Q. Okay. So am I right it's the reading of the
12 statement that you believe--

13 A. Yes. I feel I've answered that one several
14 times as well.

15 Q. Okay. And your answer is--

16 MR. ROTHSCHILD: In your hypothetical?

17 BY MR. GILLEN:

18 Q. Well, in the hypothetical, is that your harm,
19 the reading of the statement?

20 A. Yes.

21 Q. Okay. If I represent to you that there are
22 books concerning creationism in the library, do
23 you believe you're harmed by that?

24 A. By them just being in the library?

25 Q. Yes.

- 1 A. And which specific books are you talking about?
- 2 Q. Just books that present creationism. Do you
3 believe you're harmed by the books?
- 4 A. Just being in the library?
- 5 Q. Yes.
- 6 MR. ROTHSCHILD: And are these books
7 presenting creationism in a favorable light?
- 8 MR. GILLEN: They're books that describe
9 creationist theory.
- 10 BY MR. GILLEN:
- 11 Q. For the purposes of this question, I'm
12 representing to you that there are books in the
13 library of the Dover Area High School and that
14 those books describe creationist theory. Do
15 you believe you're harmed by those books?
- 16 A. They're not part of the curriculum.
- 17 Q. And when you say part of the curriculum, what
18 do you mean?
- 19 A. Referring to the school curriculum, not listed
20 as a material and resource.
- 21 Q. So you believe you're harmed by the reference
22 to Of Pandas and People in the curriculum?
- 23 A. Yes.
- 24 Q. Is there any other harm arising from the policy
25 other than what we've discussed, the reading of

1 the statement, the reference to Of Pandas and
2 People, and its existence in the library. Is
3 that the sum total of your harm?

4 MR. ROTHSCHILD: Under your hypothetical?

5 MR. GILLEN: Or under her view.

6 BY MR. GILLEN:

7 Q. I mean, is there anything else that's left that
8 we've talked about?

9 MR. ROTHSCHILD: I think she's said she
10 doesn't know exactly what's going to happen in
11 the classroom. You've put some limiting things
12 on it.

13 MR. GILLEN: Right.

14 MR. ROTHSCHILD: And that's fine, but I
15 just -- I think she's got to be answering the
16 question based on the facts as you've
17 represented them as opposed to what else might
18 happen.

19 MR. GILLEN: Okay. All right.

20 BY MR. GILLEN:

21 Q. Have you and your child discussed the book Of
22 Pandas and People?

23 A. Briefly.

24 Q. Do you know whether your child has looked at
25 the text?

- 1 A. As far as I know, no.
- 2 Q. Do you know whether your child intends to go to
3 the library and look at Of Pandas and People?
- 4 A. We haven't discussed that.
- 5 Q. Have you instructed your child not to?
- 6 A. No.
- 7 Q. Would you punish your child if she did?
- 8 A. No.
- 9 Q. Why not?
- 10 A. I don't punish my children for looking at a
11 book.
- 12 Q. Do you think that she would be harmed from
13 looking at the book?
- 14 MR. ROTHSCHILD: Objection, asked and
15 answered.
- 16 MR. GILLEN: I'm just trying to figure
17 out--
- 18 BY MR. GILLEN:
- 19 Q. Do you think she would be harmed?
- 20 A. In the science curriculum, yes.
- 21 Q. No, just looking at the book period.
- 22 A. I don't think my daughter would go seek the
23 book out for personal reading.
- 24 Q. Do you think that she's going to seek it out
25 now?

- 1 A. I have no clue.
- 2 Q. So you don't know if your daughter is going to
3 look at Of Pandas and People apart from
4 whatever looking she did with you?
- 5 MR. ROTHSCHILD: Objection.
- 6 BY MR. GILLEN:
- 7 Q. Well, did she look at the book with you?
8 Didn't you say she--
- 9 A. No, I did not say that.
- 10 Q. Okay. Do you know whether she's looked at the
11 book at all?
- 12 A. Again, I've said, I have no knowledge of it
13 being in the classroom that they have been able
14 to see it.
- 15 Q. Do you have any knowledge of her looking at the
16 book?
- 17 A. No.
- 18 Q. Do you know whether she has or not?
- 19 A. No. I have no clue.
- 20 Q. Do you know whether she intends to?
- 21 A. Again, I think I've answered that.
- 22 Q. What's the answer? I can't--
- 23 A. I don't think.
- 24 Q. Okay. You've said that you believe that your
25 daughter would be harmed if she looked at the

1 book. Is that true?

2 A. Yes, in reference to the science curriculum.

3 Q. Well, just say-- I guess I'm trying to
4 understand that. What's the difference in the
5 harm if she looks at the book-- I mean, why
6 is-- What are you saying about looking at the
7 book in the library that makes it harmful?

8 A. Again, I think I've related that I feel the
9 book is religious in nature and does not belong
10 in the science curriculum.

11 Q. And I do understand that. But what I'm asking
12 you is what would be the harm from looking at
13 the book?

14 I know what you're-- You've expressed
15 that conviction, and I understand it. But what
16 I'm saying is how do you believe your child
17 would be harmed by looking at the book?

18 MR. ROTHSCHILD: Patrick, this has been
19 asked and answered a lot of times.

20 MR. GILLEN: I'm trying to figure out
21 what's in the book that she regards as the
22 toxic part of it.

23 MR. ROTHSCHILD: She's answered that
24 question as well.

25

1 BY MR. GILLEN:

2 Q. Well, I, for the life of me, can't recall an
3 answer to that question of what is the content
4 of the book that you find harmful to your
5 daughter?

6 MR. ROTHSCHILD: Objection. Asked and
7 answered.

8 A. Yeah, I feel I've given you an answer.

9 BY MR. GILLEN:

10 Q. Okay. What is it though? What is it?

11 A. In relation to the science curriculum, again, I
12 feel it's very religious in nature and does not
13 belong in the science classroom.

14 Q. Okay. I think now I'm understanding you
15 better. If we-- It's the relationship to the
16 biology curriculum that makes the book harmful.
17 Is that what you're getting at?

18 A. Yeah.

19 Q. So in other words, if the -- this is -- I just
20 want to ask you a question -- in your opinion
21 based on the harm that you associate with the
22 text Of Pandas and People, if it was not
23 referenced in the biology curriculum but your
24 child looked at it, would your child be harmed
25 in your opinion?

1 MR. ROTHSCHILD: Objection. It's not the
2 facts of this case.

3 MR. GILLEN: No, I'm not worried about the
4 facts of the case. I'm asking her a
5 hypothetical question.

6 BY MR. GILLEN:

7 Q. I think now I understand your answer better.
8 And your answer is that if your child looked at
9 the text in connection with the biology
10 curriculum, you think there would be harm?

11 A. Yes.

12 Q. Okay. Now, that's all I'm trying to get at.
13 What would that harm be that comes from looking
14 at the book in connection with the biology
15 textbook?

16 A. Again, I've stated--

17 MR. ROTHSCHILD: Objection, asked and
18 answered.

19 BY MR. GILLEN:

20 Q. Just what is the harm though? What is it
21 specifically?

22 A. Bringing religion into the--

23 MR. ROTHSCHILD: I want to stop here.

24 MR. GILLEN: Okay.

25 MR. ROTHSCHILD: I mean and, Patrick, you

1 couldn't be more polite in this process. And I
2 know you're not trying to harass Miss
3 Kitzmilller, but if we get -- if there's a
4 variation in her answers after this question
5 has been asked seven or eight times, that's not
6 going to be sound evidence here. You have
7 asked--

8 MR. GILLEN: No, and I--

9 MR. ROTHSCHILD: Well, I'm just getting
10 clear-- Excuse me, excuse me. Let me just
11 finish. It will be a lot easier for the court
12 reporter.

13 You know, I'm just putting you on notice
14 this has now gotten extreme. And I think she's
15 answered the question pretty consistently. But
16 we're getting to the point of the problem with
17 asking a question over and over again is that
18 the witness may say something slightly
19 different thinking you're looking for something
20 else.

21 And I just think it's become unfair to the
22 witness. And the record should reflect that
23 the question has been asked over and over
24 again. That being said, go ahead and ask your
25 and--

1 MR. GILLEN: Okay. And I apologize for
2 any obtuseness on my part.

3 BY MR. GILLEN:

4 Q. And I do believe that I understand your point
5 more. And all I'm trying to see is whether in
6 your opinion you would be harmed if your child
7 looked at the book Of Pandas and People and
8 there was no reference to it in the curriculum
9 and no reference to it in the procedural
10 statement, would you still believe your child
11 was harmed?

12 MR. ROTHSCHILD: Objection, facts in
13 hypothetical not at issue in this case. You
14 may answer.

15 A. I feel -- and I've already stated this -- the
16 language is way over the level of a 9th grade
17 student. And yes, she would probably need a
18 dictionary beside her to get through the book.

19 BY MR. GILLEN:

20 Q. Okay. But is that a harm that it's an advanced
21 text that's difficult to understand?

22 MR. ROTHSCHILD: Objection.

23 A. I feel it would be confusing.

24 BY MR. GILLEN:

25 Q. Okay. So is the harm that would come from

1 looking at the text if it was not referenced in
2 connection with the biology curriculum or the
3 procedural statement that it's a difficult text
4 to read?

5 MR. ROTHSCHILD: Objection.

6 A. Yes. I think I've stated it's difficult.

7 BY MR. GILLEN:

8 Q. Is there any other harm?

9 MR. ROTHSCHILD: Asked and answered.

10 BY MR. GILLEN:

11 Q. Is there any other harm that would be to your
12 child or you apart from the difficulty of the
13 text?

14 A. I don't really think I can answer that.

15 Q. Just answer it then yes or no. Are you aware
16 of any other harm?

17 MR. ROTHSCHILD: Objection, asked and
18 answered. She's described the harm coming from
19 reading this book already.

20 A. How am I to know in that situation?

21 BY MR. GILLEN:

22 Q. Okay. That's fine. Defendants' Exhibit 4 is a
23 series of E-mails. And I think they -- if we
24 -- they've been Bates stamped number 1 through
25 4.

1 If we start at the back which is the
2 document that's Bates stamped number 4, there's
3 an E-mail dated October 28th, 2004 from you to
4 Jennifer Miller. I just want to ask you a few
5 questions about that. Who is Jennifer Miller?

6 A. My daughter's biology teacher.

7 Q. And do you know Jennifer Miller personally?

8 A. Not personally.

9 Q. Okay. Did you talk to her apart from this
10 E-mail?

11 A. No.

12 Q. If we look at Defendants' Exhibit 4, the page
13 Bates stamped number 3, there's a reply from
14 Jennifer Miller. And there's some information
15 communicated to you there concerning
16 implementation in your daughter's class.

17 Apart from the information that's
18 contained in this E-mail, do you have any other
19 information concerning the implementation of
20 the biology curriculum by the Dover Area School
21 District?

22 MR. ROTHSCHILD: I'm sorry. Would you
23 read that back, please?

24 (Question from Page 120, Lines 12 through
25 21 read by reporter.)

1 MR. ROTHSCHILD: Thank you.

2 A. And by that do you mean besides what we've
3 already discussed today?

4 BY MR. GILLEN:

5 Q. Well, apart from what's in this E-mail and--
6 Yes.

7 A. The only thing I'm aware of is the curriculum
8 change, the policy.

9 Q. Oh, I see what you're getting at. No. No.

10 A. Oh.

11 Q. Yeah, no. Outside of the context of this
12 deposition and whatever representations I've
13 made to you or documents you've looked at, is
14 there anything else -- any other documentation
15 of the biology curriculum by the Dover Area
16 School District apart from the information in
17 this E-mail dated October 29, 2004 and Bates
18 stamped number 3?

19 MR. ROTHSCHILD: I mean, there's a whole
20 document here.

21 MR. GILLEN: Yes. This document
22 contains--

23 MR. ROTHSCHILD: Just this page?

24 MR. GILLEN: Right, Bates stamped number
25 3.

- 1 A. There's none I know of.
- 2 BY MR. GILLEN:
- 3 Q. Okay. That's fine. It's really not a trick
4 question. I'm just asking you. And then if
5 you look at Defendants ' Exhibit 4, the pages
6 Bates stamped 1 and 2, that's an E-mail from
7 Michael Baksa to you. Have you had a chance to
8 look that over?
- 9 A. Yes.
- 10 Q. And again, this is information concerning the
11 implementation of the curriculum. Do you have
12 any other information apart from these pages
13 Bates stamped 1, 2, and 3 about the
14 implementation of the biology curriculum in the
15 classroom?
- 16 A. Besides what we've discussed?
- 17 Q. Right.
- 18 A. No.
- 19 Q. Okay. That's fine. Let me ask you, the
20 teacher, Jennifer Miller, asked you to forward
21 whatever answer you got to her. Did you do so?
- 22 A. No. I didn't because Mr. Baksa--
- 23 Q. CC'd her?
- 24 A. Yes.
- 25 Q. That's fine. Have you forwarded this E-mail to

1 any other persons?

2 MR. ROTHSCHILD: Besides counsel?

3 MR. GILLEN: Yes, besides counsel.

4 A. Not that I can recall.

5 BY MR. GILLEN:

6 Q. I think I know the answer, but let me just ask
7 you. Did you talk to Mr. Baksa about changes
8 or implementation of the biology curriculum?

9 A. No, I did not.

10 Q. I thank you for your patience, Eric and Tammy.
11 Thank you very much. I'm done.

12 (The proceedings concluded at 1:11 p.m.)

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COMMONWEALTH OF PENNSYLVANIA :
 : SS
 COUNTY OF DAUPHIN :

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

TAMMY KITZMILLER

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

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

Dated at Harrisburg, Pennsylvania this 4th day of January, 2005.

Debra L. Heary
 Registered Professional Reporter
 Notary Public

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