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

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2 . . . . .  
3 TAMMY KITZMILLER; et al., .  
4 Plaintiffs . CIVIL ACTION NO. 04-CV-2688  
5 vs. .  
6 DOVER AREA SCHOOL DISTRICT,. (JUDGE JONES)  
7 et al., .  
8 Defendants .

8 Deposition of : JENNIFER MILLER  
9 Taken by : Defendants  
10 Date : May 18, 2005, 10:00 a.m.  
11 Before : Vicki L. Fox, RMR,  
12 Reporter-Notary  
13 Place : Two School Lane  
14 Dover, Pennsylvania

15 APPEARANCES:  
16 PEPPER HAMILTON LLP  
17 BY: CHRISTOPHER J. LOWE, ESQUIRE  
18 For - Plaintiffs  
19 THOMAS MORE LAW CENTER  
20 BY: PATRICK T. GILLEN, ESQUIRE  
21 For - Defendants  
22 KILLIAN & GEPHART LLP  
23 BY: JANE GOWEN PENNY, ESQUIRE  
24 For - Jennifer Miller  
25 ALSO PRESENT: Michael Baksa

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I N D E X

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WITNESS

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JENNIFER MILLER

Examination

4

By Mr. Gillen

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EXHIBITS

7

J. Miller Deposition

8

Exhibit Number

Page

9

1. April 1, 2003 memo from Trudy K. Peterman to Mr.

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Michael Baksa, Mr. Larry R. Redding and Mrs. Bertha Spahr, re: Creationism As It Relates to the Approved School Board Biology I Curriculum, and attachments.

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2. February 11, 2003 memo from Dr. Trudy K. Peterman

48

12

To Dr. Richard Nilsen, Mr. Mike Baksa and Mrs.

13

Denise Russell, re: Budge Justifications for Science Department for 2003-2004 Budget Year, and attachments.

14

3. Packet of Dover Area School District School Board

61

15

Meeting Minutes and notes of Jennifer Miller.

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4. Eight pages of handwritten notes made by Jennifer Miller.

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17

5. Packet of documents produced by Jennifer Miller.

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6. Packet of documents produced by Jennifer Miller.

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7. October 13, 2004 memos, Michael Baksa to Board

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Of Directors with attachments.

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STIPULATION

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

JENNIFER LYNNE MILLER, called as a witness, being duly sworn, was examined and testified, as follows:

BY MR. GILLEN:

Q. Good morning, Mrs. Miller. My name is Pat Gillen, and I am one of the attorneys for the defendants in this case.

A. Okay.

Q. As you know, this is the time and place set for your deposition which I see as just my opportunity to get your side of the story.

A. Okay.

Q. Plainly, there is a dispute here. Different people have different perspectives on what happened and what the issues are. This is my chance to get that from you.

A. Okay.

Q. There are a few aspects of this process that are rather unusual. The first is that Vicki records everything we say. And therefore, that places a premium on our responses being verbal as opposed to gestures or head nods which you will find we do quite frequently.

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1           Also, I ask questions, and you give answers. It  
2 is a good idea to let me finish asking my question  
3 before you begin to answer.

4           Now I frankly confess that I pause a lot when I'm  
5 delivering my question. Bear with me, and I will do the  
6 same for you.

7 A.       Okay.

8 Q.       Relatedly, the process tends to lay bare the imprecision  
9 of human communication. You may listen to my question  
10 and say what is he asking. If that is the case, if you  
11 don't understand my question, please let me know, and I  
12 will try and rephrase it and make it more precise.

13           By the same token, if I am following up on an  
14 answer, please understand I am not trying to harass you.  
15 I am trying to make sure I understand what you are  
16 telling me.

17           Let's see. If I ask any question that makes you  
18 feel uncomfortable, please let me know, and I will do my  
19 best to avoid any sensitive point to the extent that I  
20 can.

21           The process is not an endurance contest. If you  
22 want to take a break, please let me know, and we can do  
23 that.

24 A.       Okay.

25 Q.       Have you ever been deposed before?

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- 1 A. No.
- 2 Q. Would you please state and spell your full name for the  
3 record?
- 4 A. Jennifer Lynne Miller.
- 5 Q. I have reason to believe you are currently employed?
- 6 A. I am.
- 7 Q. Would you tell me where?
- 8 A. Dover Area School District at the high school.
- 9 Q. Where do you currently reside?
- 10 A. York, Pennsylvania.
- 11 Q. Just give us your address?
- 12 A. 100 White Fence Lane, York, Pennsylvania.
- 13 Q. As we sit here today, do you have any handicap that  
14 would impair your ability to perceive my questions and  
15 respond?
- 16 A. No.
- 17 Q. Are you on any medication that might inhibit your  
18 ability?
- 19 A. No.
- 20 Q. If we look at from say January of 2002 forward, at any  
21 time during that period, were you on any medication that  
22 might impair your ability to recall, to perceive?
- 23 A. No.
- 24 Q. Did you have any health problems that might impair your  
25 ability to recall?

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- 1 A. No.
- 2 Q. I see that you are represented by counsel.
- 3 A. Yes.
- 4 Q. And just tell me when did you retain counsel?
- 5 A. I guess January. Officially, January, February, 2005.
- 6 Q. And did you retain counsel for the purpose of this
- 7 litigation?
- 8 A. Yes.
- 9 MR. GILLEN: And forgive me, Jane, what is your
- 10 full name?
- 11 MS. PENNY: Jane Penny.
- 12 BY MR. GILLEN:
- 13 Q. Jane Penny is of the firm that you retained?
- 14 A. Yes.
- 15 Q. I am going to ask you a few questions about people you
- 16 might have spoken with in preparation for the
- 17 deposition.
- 18 Did you speak with your lawyer?
- 19 A. Yes.
- 20 Q. When I ask you these questions, I am not trying to pry
- 21 into the communications that you had with your lawyers
- 22 that were confidential; that is with no other person
- 23 present. Okay?
- 24 A. Okay.
- 25 Q. Apart from your lawyers, did you speak with anyone else

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- 1 in preparation for today's deposition?
- 2 A. I guess Monday after school, I met with our lawyers and  
3 Bertha Spahr, Rob Eshbach, Bob Linker and Sandi Bowser  
4 were also in the room.
- 5 Q. Do you know whether they are all represented by the same  
6 attorneys?
- 7 A. Yes, they are.
- 8 Q. Apart from that discussion, have you consulted or  
9 communicated with anyone else in preparation for the  
10 deposition?
- 11 A. No.
- 12 Q. Have you met at any time with counsel for the  
13 plaintiffs?
- 14 A. Yes.
- 15 Q. When did that meeting occur?
- 16 A. We had a meeting sometime in December I believe of 2004  
17 -- and let's see -- and I guess just April, 2005.
- 18 Q. Were there any other meetings?
- 19 A. No, not face-to-face meetings.
- 20 Q. Let's look at the two meetings first. The one in  
21 December of 2004, do you remember the names of the  
22 attorneys you met with?
- 23 A. Paula Knudsen and Eric Rothschild.
- 24 Q. Who else was present at that meeting?
- 25 A. I believe Bill Miller, who is a member of our DAEA, our

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- 1 representation from our Association here at Dover.
- 2 Q. Is that a union?
- 3 A. Yes. Union representation. And Rob Eshbach and Bertha  
4 Spahr. And I believe Sandi Bowser was there; although,  
5 I couldn't be positive.
- 6 Q. And generally speaking, what did you discuss at that  
7 meeting in December of 2004?
- 8 A. Basically, gathering background information, when did we  
9 meet with so and so, what was said, that kind of thing,  
10 background.
- 11 Q. When you say background information, I take it it is  
12 information bearing on the selection of the biology  
13 text?
- 14 A. Right, right.
- 15 Q. And the biology curriculum?
- 16 A. Yes.
- 17 Q. The meeting more recently in April of 2005, who did you  
18 meet with at that time?
- 19 A. That was just Paula Knudsen.
- 20 Q. Who else was present?
- 21 A. Sandi Bowser, Rob Eshbach and Bertha Spahr.
- 22 Q. Apart from these meetings, have you had any other  
23 communications with --
- 24 A. Yes.
- 25 Q. Tell me when those occurred.

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- 1 A. I first got a call from Eric Rothschild I believe it was  
2 sometime late October of 2004.
- 3 Q. And tell me what you discussed with Mr. Rothschild at  
4 that time.
- 5 A. He informed me that he was a lawyer with Pepper  
6 Hamilton, and that he was possibly representing parents  
7 in the case, and that -- basically, just more  
8 background. When did this happen, and who did you meet  
9 with, and that kind of thing.
- 10 Q. Apart from this telephone conversation, did you have  
11 other conversations?
- 12 A. There were a couple of times when Eric would e-mail for  
13 information. I know just recently, there was a request  
14 for a textbook that we looked at in ordering the biology  
15 textbook. He asked for a new phone number of certain  
16 people and things like that.
- 17 Q. Recently, you say there was an inquiry regarding a  
18 textbook?
- 19 A. Yes.
- 20 Q. That occurred via e-mail?
- 21 A. Yes.
- 22 Q. Did you include that e-mail?
- 23 A. Yes, that is in there.
- 24 Q. Thank you very much. Apart from these two conversations  
25 or communications with Mr. Rothschild you have

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- 1 referenced, were there others?
- 2 A. I just had -- the only one was Paula called me -- I  
3 don't know -- several weeks ago just to make me aware of  
4 information that came out in another deposition that she  
5 felt that I should be aware of.
- 6 Q. What information was that?
- 7 A. That Angie Yingling referred to me as the teacher that  
8 wears tight pants. She thought that I should be aware  
9 of that. That was it.
- 10 Q. Angie's deposition was colorful to say the least. I  
11 think everyone blushed at some point.  
12 Anything else in terms of communications with  
13 other persons?
- 14 A. Not that I can recall.
- 15 Q. Or lawyers for the plaintiffs?
- 16 A. No.
- 17 Q. How about documents, have you reviewed documents in  
18 preparation for today's deposition?
- 19 A. Yes.
- 20 Q. Tell me if you can just what were the nature of the  
21 documents in general?
- 22 A. Most of the documents that we have put together, just  
23 sort of looking over the timeline to make sure we have  
24 that down. Just background, communications, that kind  
25 of thing.

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- 1 Q. And the documents you have referenced, did you provide  
2 those in response to the subpoena?  
3 A. Yes.  
4 Q. Did you speak with any of the plaintiffs in preparation  
5 for the deposition?  
6 A. No.  
7 Q. Have you reviewed any of the deposition transcripts from  
8 the proceedings thus far?  
9 A. Yes.  
10 Q. Which transcripts have you reviewed?  
11 A. I have read I guess the first four which would have been  
12 Bonsell's, Buckingham's, Nilsen's and Harkins' I  
13 believe, those four. And I just recently read Charlotte  
14 Buckingham's, too.  
15 Q. Did you have any conversations with former Board members  
16 in connection with this deposition?  
17 A. No.  
18 Q. Apart from the discussion with your colleagues that you  
19 had with counsel, have you had discussions with your  
20 colleagues about your deposition?  
21 A. No, not apart from with counsel.  
22 Q. It appears you have been quite thorough in your response  
23 to my subpoena, and I appreciate that. Just let me ask  
24 you a few questions to see if there is anything you  
25 might have neglected inadvertently.

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1                   Do you use your home computer in connection with  
2                   your work as a schoolteacher?  
3    A.           Not typically, no.  
4    Q.           Did you check that computer?  
5    A.           No, I don't think I did.  
6    Q.           Do you have any recollection of generating documents  
7                   relating to the subject matter of this litigation on  
8                   your home computer?  
9    A.           No. The only thing would have been the e-mails that I  
10                  told you about with Eric. That would have been it that  
11                  I can recall.  
12   Q.           I know or I believe at some point plaintiffs' counsel  
13                  served a subpoena on you?  
14   A.           Yes.  
15   Q.           Are the documents that you produced to me today  
16                  identical to those you have produced for them?  
17   A.           Yes.  
18   Q.           Thank you. How would you prefer I address you for the  
19                  purpose of this deposition?  
20   A.           Jen, Jennifer. It doesn't matter.  
21   Q.           Feel free to call me Pat if my questions are imprecise.  
22                  Jen, if you would, give me a brief sketch of your  
23                  educational background beginning with high school.  
24   A.           Graduated from high school from Spring Grove High  
25                  School, went to Elizabethtown College. I graduated with

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- 1 a bachelor of science degree in biology and secondary  
2 education. I'm certified to teach biology and general  
3 science. And I have a master's degree from Penn State  
4 in teaching and the curriculum.
- 5 Q. In terms of your biology major, what sort of coursework  
6 did you take as an undergraduate?
- 7 A. Oh, my. I mean General Biology 1 and 2. I had  
8 Molecular Biology. Goodness. Physiology. That's  
9 terrible. Development and Evolution was a course that I  
10 had. Genetics, Ecology. I am sure there was more.
- 11 Q. That is quite all right. Let me be a little more  
12 specific. You have indicated you had at least one  
13 course that seems focused on Evolutionary Theory?
- 14 A. Yes.
- 15 Q. Who taught that course?
- 16 A. Professor Hoffman. Dr. Hoffman I guess that was.
- 17 Q. And about what year would that be?
- 18 A. I believe that was my junior year. So that would have  
19 been '91-'92, somewhere around there.
- 20 Q. And Molecular Biology -- let me ask you this: Apart  
21 from this course on Development and Evolution, did you  
22 have any other course which had Evolutionary Theory as a  
23 main focus of the area of inquiry?
- 24 A. Probably not as a main focus. But I think in General  
25 Biology, you covered it, too. But not in the depth that

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1           you would in the specific course.  
2   Q.       Molecular Biology?  
3   A.       Yes.  
4   Q.       When did you take that?  
5   A.       I believe that was my sophomore year which would have  
6            been '90, '91.  
7   Q.       Who taught that course?  
8   A.       Dr. Polanowski.  
9   Q.       You indicated you had been certified by the state for  
10           teaching biology?  
11   A.       Yes.  
12   Q.       What does that entail?  
13   A.       You mean like what courses can I teach?  
14   Q.       No. What did you have to do in order to be certified?  
15   A.       To be certified, you have to take tests in your specific  
16            area, and then a general sort of teacher test to be  
17            certified.  
18   Q.       So there is a written examination?  
19   A.       Yes.  
20   Q.       And your subject matter was biology?  
21   A.       Yes.  
22   Q.       And your master's from Penn State, when did you get  
23            that?  
24   A.       I believe '99. It would have been May or June of '99 I  
25            believe.

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- 1 Q. And what was that in?  
2 A. Teaching and the curriculum.  
3 Q. Was it teaching in general or teaching specific to your  
4 area of focus?  
5 A. In general.  
6 Q. How about the focus on curriculum, was that in general  
7 also?  
8 A. Yes.  
9 Q. Did any of the coursework or work that you did in  
10 connection with getting your master's specifically  
11 address biology curriculum?  
12 A. No.  
13 Q. I am going to ask you a few questions just to see if you  
14 have any relations with -- certain kinds of relations  
15 with any of the other persons who are involved in this  
16 dispute.  
17 A. Okay.  
18 Q. Do you have any relations by blood or marriage to anyone  
19 who has been on the Dover Area School District School  
20 Board since January of 2002?  
21 A. No, I don't believe so.  
22 Q. How about anyone who has been in the administration?  
23 A. No.  
24 Q. How about anyone who has employed by Dover area schools?  
25 A. I have to think. I'm not sure. There may be a teacher

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- 1 or secretary or something, but no administration or  
2 anything like that.
- 3 Q. It seems a remote relation?  
4 A. Yes, it is not direct.
- 5 Q. How about any business dealings, have you had any  
6 business dealings with anyone who has been on the Dover  
7 Area School District School Board since January of 2002?  
8 A. No.  
9 Q. The administration?  
10 A. No. Other than day-to-day. They are my boss.  
11 Q. That's a comprehensive answer. How about any shared  
12 memberships in organizations with Dover Area School  
13 Board members since January of 2002?  
14 A. I don't believe so, no.  
15 Q. Members of the administration?  
16 A. Unless they are part of a teacher type thing, no.  
17 Q. That's fine. How about you indicated that you are a  
18 member of a union representing teachers?  
19 A. Yes.  
20 Q. Do you have any relationship outside your sort of work  
21 here at the school with Sandi Bowser?  
22 A. No.  
23 Q. Bill Miller?  
24 A. No.  
25 Q. Brad Neal?

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- 1 A. No.
- 2 Q. Give me a sense of your employment history. When did  
3 you start teaching?
- 4 A. I started teaching the '93-'94 school year.
- 5 Q. Where did you start?
- 6 A. Here at Dover.
- 7 Q. What subject matter?
- 8 A. My first year, I taught Biology and it was called Techno  
9 Science at that time, which is basically an  
10 environmental science. Since then, I basically taught  
11 Biology and Biology 2 which later became Anatomy and  
12 Physiology.
- 13 Q. And subsequently?
- 14 A. Subsequently what?
- 15 Q. What did you teach?
- 16 A. Since?
- 17 Q. Since the first year.
- 18 A. Since the first year, it has been Biology, Anatomy and  
19 Physiology.
- 20 Q. We know that the biology text and changes to the biology  
21 curriculum are sort of the focal point of this dispute.  
22 I want to get a sense for what you recall about how this  
23 dispute unfolded.
- 24 A. Okay.
- 25 Q. If we look at the period up until January of 2002, and

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- 1 everything before that, were these issues on the radar  
2 screen so to speak prior to January of 2002?
- 3 A. No, not that I'm aware of.
- 4 Q. How about for the year 2002, do you recall the biology  
5 text or the biology curriculum being a focal point of  
6 attention by the Board?
- 7 A. No.
- 8 Q. That brings us to 2003. How about that year if we look  
9 at that year from January through say May of 2003?
- 10 A. Yes. The only thing that I can remember is a mention  
11 from Bertha Spahr, who is the Department head, of  
12 conversations that I guess that were held between Mr.  
13 Baksa and her, or Dr. Peterman and her, on teaching  
14 equal time Creationism and Evolution in the biology  
15 classroom.
- 16 Q. Okay. Give me a sense for when that conversation  
17 occurred.
- 18 A. I couldn't pinpoint it. Probably spring of 2003.
- 19 Q. April, May?
- 20 A. Right, somewhere around there.
- 21 Q. And tell me what did Bert Spahr tell you?
- 22 A. I believe it was just something like we better, you  
23 know, keep our guard up. This is what was asked of me  
24 or discussed. Something like that.
- 25 And basically after that, I mean other than that

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- 1 conversation, I don't remember much else being  
2 discussed.
- 3 Q. Did she attribute any statements to Mike Baksa?  
4 A. Not in particular, no. She just had -- I believe she  
5 said he had come to her and talked to her about it, his  
6 concerns or whatever.
- 7 Q. Let me be more specific. You used the word Creationism.  
8 Did Bert say that Mike had told her someone wanted to  
9 teach Creationism?  
10 A. I remember it that way, yes.
- 11 Q. Do you recall her saying anything about equal time for  
12 other theories?  
13 A. I believe that she said equal time Creationism and  
14 Evolution.
- 15 Q. Apart from that statement, was there anything else that  
16 Bert told you and attributed to Mike Baksa?  
17 A. Not that I can recall, no.
- 18 Q. Did she mention Dr. Nilsen in that conversation?  
19 A. I don't believe so, no.
- 20 Q. How about Dr. Peterman?  
21 A. I just know that after Mr. Baksa came to her, then she  
22 went to Dr. Peterman with her concerns. I know she was  
23 concerned with at that time, we had two untenured  
24 teachers teaching biology and subjecting them to  
25 criticism or whatever. The subject sort of was a leery

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- 1 one. She went to Dr. Peterman with her concerns.  
2 I don't know any specific statements that Dr.  
3 Peterman made because I was not in that meeting when she  
4 went to her.  
5 Q. Fair enough. Did she state what her concerns were for  
6 the untenured teachers?  
7 A. Just that there has been court cases that say you can't  
8 teach Creationism. So she was concerned if this is  
9 coming, then you have some untenured teachers that would  
10 be teaching it. She was concerned for -- I don't  
11 know -- I don't know if I want to say for their jobs.  
12 Younger teachers and putting them in that position I  
13 guess.  
14 Q. You said that Bert said we need to keep on our guard?  
15 A. Yes. Something to that effect, yeah.  
16 Q. Sure. Did she say anything else that elaborated on that  
17 point?  
18 A. Not that I can recall.  
19 Q. Did Bert ever show you a memo reflecting --  
20 A. No.  
21 Q. -- her conversation?  
22 A. No. I have seen it recently. But not at that time, I  
23 didn't, no.  
24 MS. PENNY: Off the record.  
25 (J. Miller Deposition Exhibit 1 was marked.)

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1 BY MR. GILLEN:

2 Q. Would you take a minute to look that over, Jen?

3 A. Sure. Okay.

4 Q. There's a few things in there I would like to ask you  
5 about. If you look at that first paragraph about midway  
6 through, you will see a sentence which says that she --  
7 referencing Ms. Spahr -- explained to Mr. Baksa that all  
8 biology teachers state that another theory of Evolution  
9 is Creationism, but Creationism per se is not taught  
10 since it is not addressed by the standards.

11 Did you have any discussion with Bert Spahr about  
12 whether Creationism was referenced prior to April 1st,  
13 2003?

14 A. Not that I can recall. I don't know if I would agree  
15 with what she says there, but I don't necessarily recall  
16 her -- we may have had a conversation, but I don't  
17 remember any specifics if we had.

18 Q. That's fine. Everyone realizes you are trying to  
19 remember things from April of 2003.

20 A. Right.

21 Q. What do you mean when you say I don't agree with what  
22 she says there?

23 A. I will just tell you the way I teach Evolution is I have  
24 never really had a problem with students in my classroom  
25 disagreeing or having a whole lot of controversy because

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1 the very first day that I teach Evolution, I ask them  
2 what their definition of Evolution is.

3 We always get all kinds of different things,  
4 monkeys, we came from monkeys and all kinds of things  
5 like that. Then I try to put to rest the first day that  
6 what we are going to teach is Evolution is change over  
7 time.

8 And I basically tell them I don't believe -- I  
9 can't care how they believe life began. We are not  
10 going to hit that. We are going to look at once life is  
11 here, what has happened to it since.

12 I wouldn't say that I necessarily stated that  
13 another theory is Creationism because I try to put that  
14 at rest in the beginning and not get into the origin of  
15 life type thing.

16 Q. Okay. And that is part of the reason I asked you the  
17 question. You say change over time an origin of life.  
18 Where do you start in your presentation of Evolutionary  
19 Theory, Jen; how do you present that concept to your  
20 students?

21 A. That conversation I just told you is basically the first  
22 day. And then we look at -- we start with Darwin and  
23 his background, how he went on his trip and what  
24 evidence he collected and that kind of thing and how he  
25 came up with his theory of natural selection.

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- 1 I always tell them that Darwin didn't really come  
2 up with Evolution, that most people knew that things  
3 changed. That Darwin was the one that came up with  
4 natural selection, a mechanism for how things changed.  
5 Then we look from there at basically natural  
6 selection and competition and how finches -- how do you  
7 think a finch got here? There's all kinds of different  
8 species of finches. How do we get all these different  
9 species of finches? We look at that.
- 10 Q. Am I understanding you correctly that you don't look at  
11 sort of the microbiological part of the process?
- 12 A. Right. Right.
- 13 Q. Don't look at the larger sort of what cosmological part  
14 of the process, the Big Bang?
- 15 A. Right, right.
- 16 Q. And then you have referenced a sort of diversification  
17 of species?
- 18 A. Yes.
- 19 Q. Do you focus on change within species?
- 20 A. Yes. But like by isolation, for example, a finch could  
21 become two species of finches because they don't  
22 interbreed anymore. They would still be two separate  
23 species of finches, but they are still a finch.
- 24 Q. You are the biology teacher. How is that level of  
25 change you have just described by your profession?

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- 1 A. To me, I call it speciation. That is what that is  
2 called. Origin of species or speciation, becoming new  
3 species.
- 4 Q. You have referenced origin of life. Do you see that as  
5 another way of saying origin of species, or it's two  
6 different concepts?
- 7 A. I see that as two different things.
- 8 Q. Tell me how.
- 9 A. Origin of life is how life began from a single molecule  
10 up to the many organisms that we have today. Whereas  
11 speciation is just as I said, how a finch becomes  
12 different species of finches or how a turtle becomes  
13 different species of turtles.
- 14 Q. Forgive me. High school biology was my last biology.  
15 This sort of comes up in these depositions. You are the  
16 teacher so I want to get a sense for what about the  
17 connection between species or the diversification of  
18 species?
- 19 A. That is one part of Darwin's Theory, the interconnection  
20 between different species. But again, I try to  
21 concentrate on not going back into what became what  
22 necessarily, sort of like a timeline of life  
23 necessarily. I try to stay away from that.  
24 I go with, like I said, speciation.
- 25 Q. How about if we look at the origin of man? I am not

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- 1           sure how that is described in Evolutionary Theory. But  
2           that topic, do you present on that?
- 3   A.       No.
- 4   Q.       Did you ever present on that?
- 5   A.       Not that I can recall, no.
- 6   Q.       Did you see that subject as outside -- what shall I say  
7           -- the parameters of presentation that you have  
8           described to me thus far?
- 9   A.       It definitely -- I wouldn't even say it's part of  
10          Darwin's Theory, the origin of man. But it is part of  
11          sort of the whole -- can fall under the Evolution. But  
12          again, I try to stick with some of Darwin's Theory and  
13          speciation. I see it as two separate things.
- 14  Q.       I take it from your answers that it was never the  
15          subject of your classroom instruction?
- 16  A.       Right. I couldn't tell you what other classrooms do.
- 17  Q.       If we look at the second paragraph of this document  
18          which has been marked as Exhibit 1, and which I will  
19          just say for the record is a memo from Dr. Peterman  
20          dated April 1st, 2003 to Mike Baksa and others, the  
21          second paragraph of that memo, the second sentence says  
22          I advise them to continue to mention that Creationism is  
23          another alternate theory of Evolution.
- 24  A.       Yes.
- 25  Q.       Did you ever receive instruction from anyone along those

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- 1 lines?
- 2 A. I don't recall ever Dr. Peterman, no, saying anything  
3 like that to us.
- 4 Q. How about Bert Spahr, did she ever give you a direction  
5 along those lines?
- 6 A. I think she may have said continue teaching as is, you  
7 know, as you are.
- 8 Q. And that statement, do you connect that with this memo  
9 or the discussion you had with Bert?
- 10 A. Probably, yeah. When she was sort of explaining that  
11 this occurred, and she explained just to continue  
12 teaching as we are to our standards and things like  
13 that.
- 14 Q. When you spoke with Bert, did she reference this memo?
- 15 A. I don't -- I couldn't tell you. I don't know if she did  
16 or not.
- 17 Q. That's fine. I just want to get a sense for what you  
18 recall. That's all.
- 19 So we have this discussion in the spring of 2003,  
20 April or May. When does the school year end?
- 21 A. Beginning of June; first, second week of June.
- 22 Q. I think you said you don't recall anything really  
23 happening after that?
- 24 A. No.
- 25 Q. Let's look at the fall of 2003. Let me ask you: Did

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- 1 the biology text or biology curriculum come to your  
2 attention in the fall?
- 3 A. Yes.
- 4 Q. Tell me how.
- 5 A. We were asked to sit in in a meeting with Mr. Bonsell to  
6 go over his concerns I guess with how Evolution was  
7 taught in the biology classes.
- 8 Q. You say fall of 2003. Can you date it any more  
9 precisely?
- 10 A. No. I don't remember.
- 11 Q. That's fine.
- 12 A. I am guessing -- no, I don't know. I don't know when it  
13 was.
- 14 Q. That's quite all right and not unusual.
- 15 A. I know it was the fall because I remember having  
16 discussions that his son was going to take biology in  
17 the spring. So I know it was before. Our spring  
18 semester would have started in January.
- 19 Q. All right. I jumped to this a little early. Let me ask  
20 you this: In 2003 in the spring, was the biology text  
21 up for purchase?
- 22 A. I have to think. We got the textbook this year,  
23 2004-2005. I guess it would have been, yes.
- 24 Q. Let's shift back to the spring, say the first half of  
25 the year of 2003. Let me ask you: Do you recall the

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1 biology text being a subject of discussion?

2 A. No. The only -- I believe if I remember correctly that  
3 year, we were up for new textbooks because there's a  
4 rotation. Each Department gets them a certain number of  
5 years. And the Science Department was up to get new  
6 textbooks.

7 I believe that was the year that they put off all  
8 purchase of any textbooks, the School Board did, until  
9 the next year. They wanted to wait a year I guess. I  
10 am assuming it was to save money.

11 Q. You say you're assuming. Did you hear anything about  
12 fiscal pressure?

13 A. I think so. I don't know. I was told probably -- I  
14 remember something about using the fund balance the next  
15 year to purchase the textbooks or something. No  
16 textbooks were purchased that year as far as I know.

17 Q. Give me a sense for when you got that news. Did that  
18 utterly cut short even the selection process, or had the  
19 selection occurred, and then you got the word we are not  
20 going to buy them?

21 A. I believe that the selection had occurred because we  
22 have to have our budgets done in January. So I believe  
23 we had already put in for textbooks, and then we had  
24 heard that no one was getting them that year.

25 Q. If you look at the ordinary cycle of text selection and

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- 1 budget process for the School District, does that give  
2 you a sense for when you would have -- the text  
3 selection would have occurred and the news of no  
4 purchase would have been given? That is a very awkward  
5 question.
- 6 A. No, we always put them in in January. The budget I  
7 believe goes out in the summer. Sometime between  
8 January and June, we had heard that they weren't doing  
9 any textbooks at some point.
- 10 Q. Good enough. So we are in the fall of 2003 then?
- 11 A. Yes.
- 12 Q. And there is a meeting with Alan Bonsell?
- 13 A. Yes.
- 14 Q. Do you know why you were meeting with Alan Bonsell? Was  
15 it his capacity as head of the curriculum committee?
- 16 A. Yes. I believe so at that point, yes.
- 17 Q. And how did you get word of the meeting?
- 18 A. I'm assuming -- I don't remember specifically, but I'm  
19 assuming Mrs. Spahr would have told us as a Science  
20 Department that we were asked to meet.
- 21 Q. If we use this meeting as a marker and then the  
22 discussion you have already recalled, anything else come  
23 to mind between that discussion with Bert in the spring  
24 and this notification from Bert that there is going to  
25 be a meeting of the curriculum committee?

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- 1 A. No, not that I recall.
- 2 Q. When Bert Spahr told you there was going to be a meeting  
3 with Alan Bonsell, did she give you more information  
4 about that?
- 5 A. I believe that it was just on be prepared to explain how  
6 you teach Evolution, that he had concerns of how  
7 Evolution was taught.
- 8 Q. At that time, did she tell you the nature of his  
9 concerns?
- 10 A. Other than that his son was going to be taking biology  
11 in the spring, I don't recall anything.
- 12 Q. Where was the meeting?
- 13 A. I believe that was in one of the conference rooms at the  
14 High School. It might have been in the Principal's  
15 Office. I don't remember specifically.
- 16 Q. Who was there?
- 17 A. I can't remember if all of the Science Department was  
18 there, but I remember a good number of us were there.  
19 There's seven of us. I would say at least over half of  
20 us was there.
- 21 Obviously, Mr. Bonsell was there. I can't  
22 remember if -- I am assuming it was Mr. Baksa. He was  
23 usually in on all of the meetings. I can't remember  
24 if -- I think -- I am trying to think in the fall of  
25 2003, I think maybe Dr. Peterman was there also.

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- 1 Q. You mentioned the Science Department is fairly large.  
2 Was this meeting addressing science generally or  
3 biology?  
4 A. It was the topic of Evolution. It was specifically  
5 biology, but I know that there were other members that  
6 don't teach biology there. It was the whole Science  
7 Department that was asked to come.  
8 Q. At that time, who was in the Science Department? There  
9 is Bert Spahr?  
10 A. Yes.  
11 Q. Rob Eshbach?  
12 A. Rob Eshbach and myself, Robert Linker, Leslie Prall,  
13 Bryan Rehm, Dave Taylor. I'm thinking. I think that  
14 that would basically cover it.  
15 Q. Of those names, do you think Bert Spahr was there?  
16 A. Yes.  
17 Q. Rob Eshbach?  
18 A. Yes.  
19 Q. Robert Linker?  
20 A. That one, I am not sure of. I don't know.  
21 Q. Leslie Prall?  
22 A. I think she might have been there. Not a hundred  
23 percent positive.  
24 Q. How about Bryan Rehm?  
25 A. Yes, he was there.

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- 1 Q. And Dave Taylor?  
2 A. That one, I am not sure of.  
3 Q. And you are not sure of Dr. Peterman?  
4 A. I think she was there. I couldn't say with a hundred  
5 percent certainty.  
6 Q. How about Dr. Nilsen?  
7 A. I don't believe so. I don't remember that he was there.  
8 Q. Was Alan Bonsell the only Board member there?  
9 A. Yes.  
10 Q. Tell me what you can recall about that meeting. Wait.  
11 Let me stop you. I'm sorry.  
12 Did you have any discussion with any of your  
13 colleagues or members of administration or School Board  
14 prior to attending this meeting with Mr. Bonsell?  
15 A. Not that I can recall, no.  
16 Q. Earlier, Bert had said something to the effect of be on  
17 guard?  
18 A. Right.  
19 Q. Did she express similar concerns in --  
20 A. I was going to say if anything, it would have been a  
21 discussion among Department members. You know what I  
22 mean? But I don't remember anything with administration  
23 or the School Board before we went in.  
24 Q. When she told you to be prepared to explain how you  
25 teach Evolutionary Theory, did you have an understanding

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- 1 of what she was getting at?
- 2 A. Not necessarily. I remember conversations -- I don't  
3 know if it was with Bertha -- I believe Mr. Baksa. I  
4 don't remember if it was this meeting or another  
5 meeting, but I remember someone giving us background on  
6 some of Mr. Bonsell's beliefs, where he may be coming  
7 from.
- 8 Q. And you say background on Mr. Bonsell's beliefs was  
9 provided by someone?
- 10 A. Yeah.
- 11 Q. A couple of things. Do you think it was in preparation  
12 for this meeting?
- 13 A. It may have been. I believe it was, yeah.
- 14 Q. Let me see if I can help you in this way. Did you have  
15 another meeting with Mr. Bonsell about the biology  
16 curriculum while he was head of the Board curriculum  
17 committee?
- 18 A. Not that I can recall. He was at meetings where he was  
19 Board President, but I don't believe there was another  
20 meeting with him as head of Board curriculum.
- 21 Q. Does this make you say --
- 22 A. That is why I say it probably was this.
- 23 Q. Do you recall who gave you this background on  
24 Mr. Bonsell's beliefs?
- 25 A. I think it was Mr. Baksa.

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- 1 Q. Do you recall what background you received?  
2 A. Just that Mr. Bonsell -- I remember the conversation of  
3 him being I guess what is called a Young Earth Theorist  
4 that only believe life is a little over 2,000 years old,  
5 does not believe necessarily in some of the carbon  
6 dating and fossil records that prove that life is older  
7 than 2,000 years old.  
8 Q. Do you recall any mention of Intelligent Design?  
9 A. No.  
10 Q. Any mention of Of Pandas and People?  
11 A. No.  
12 Q. Any mention of balance in the text that was being used  
13 at that time?  
14 A. Not that I can recall, no.  
15 Q. Any mention of specific concerns about the text that was  
16 in use?  
17 A. No. Not that I can recall, no.  
18 Q. Apart from this background you believe you received in  
19 preparation for this meeting, any other discussions with  
20 your colleagues leading up to the meeting?  
21 A. Not that I can remember, no.  
22 Q. Tell me how the meeting unfolded to the extent you can  
23 remember.  
24 A. Again, he was asking how we taught Evolution, how was it  
25 presented in the biology classroom. And I explained to

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1 him, just as I explained to you earlier, how I approach  
2 Evolution.

3 And we did explain to him -- he was concerned with  
4 -- I remember talking about the origin of life. He was  
5 concerned with do we look at the origin of life. And we  
6 explained to him no, that we did explain the difference  
7 between origin of life and origin of species and  
8 speciation, and that is what we covered.

9 And to the best of my recollection when we left  
10 the meeting, we thought that he was -- we left on good  
11 terms. There was no, you know, heated debate or  
12 anything like that.

13 We had assumed that his concerns were addressed  
14 and that he was satisfied with how we taught Evolution  
15 when we left that meeting.

16 Q. Let me ask about that. Was it just an exchange, a sort  
17 of cordial exchange, or was there any -- what shall I  
18 say -- animosity?

19 A. No, I don't remember any.

20 Q. Do you recall anything that Mr. Bonsell said?

21 A. No, I couldn't quote him saying anything in particular.

22 Q. You said that he had a concern related to the origins of  
23 life?

24 A. Yes.

25 Q. When he used that term, did you get a sense for what he

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- 1 meant?
- 2 A. Again, when you're talking about origins of life, that's  
3 when you get into some of the aspects of Evolution that  
4 are the most controversial because it would talk about  
5 how one species would become another species or that  
6 kind of thing.
- 7 Q. But did he say anything that addressed those subjects  
8 you have just described?
- 9 A. I can't remember specifically, no.
- 10 Q. You explained how you teach biology. Who were the other  
11 biology teachers at that time?
- 12 A. It would have been Leslie Prall and Robert Linker. And  
13 Rob Eshbach was teaching it -- I don't remember what  
14 year -- but he was teaching at least a couple of classes  
15 at some point. So he would have taught it or was  
16 currently teaching it. I can't remember.
- 17 Q. Did they all give an individual explanation?
- 18 A. Not that I can remember, no. I think that they sort --  
19 I don't know if they elected me as the spokesperson or  
20 what.
- 21 Q. Was it basically you gave your explanation, and they  
22 said me, too?
- 23 A. Basically, yes.
- 24 Q. How about did Creationism come up during that meeting?
- 25 A. I don't remember that it did, no.

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- 1 Q. Did Bert say anything?  
2 A. Not at that meeting, I don't remember, no.  
3 Q. I am sorry?  
4 A. Not that I remember.  
5 Q. Do you recall Bert Spahr bringing any materials to the  
6 meeting?  
7 A. There were -- I can't remember if it was this meeting,  
8 but I know she had stacks of information that she had  
9 printed I guess off the Internet on some of the court  
10 cases that covered Creationism in the classroom, but I  
11 can't remember if it was at that meeting -- we have had  
12 so many -- or if it was at other meetings.  
13 I don't remember specifically that she had  
14 information at that meeting.  
15 Q. Do you recall anything that Dr. Peterman said when she  
16 was there?  
17 A. No, nothing in particular.  
18 Q. Sometimes recollecting an event helps you get a better  
19 fix on it. As you sit here and describe the meeting in  
20 more detail, do you think she might have been there?  
21 A. That is why I can't necessarily say that she said  
22 anything particular because I can't really remember --  
23 you know what I mean -- if she was there or not.  
24 I guess I assumed she was there, but I'm not sure.  
25 I can't be positive.

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- 1 Q. You say you left there thinking that Mr. Bonsell's  
2 concerns had been addressed. If we look at the period  
3 after this meeting through the end of 2003, did you  
4 receive any communication from the administration that  
5 you saw as connected to this meeting?
- 6 A. Other than when we left the meeting, Mr. Baksa may have  
7 said I think it went well -- or you know what I mean --  
8 I think you addressed his concerns, something like that.
- 9 Q. But nothing else?
- 10 A. If you are talking about to the end of 2003, are you  
11 talking about the 2003-2004 school year, or are you just  
12 talking to the end of 2003? It is different with school  
13 years.
- 14 Q. That has happened more than once. Not being a teacher,  
15 I tend to think in calendar years and almost pine for  
16 the days I thought in school years.
- 17 You are right. I am focused on the end of the  
18 calendar year 2003.
- 19 A. I don't remember anything then, no.
- 20 Q. How about talk among your colleagues, did you have a  
21 discussion with your colleagues about what you perceived  
22 as the outcome of the meeting?
- 23 A. I don't remember any specific discussions, but I would  
24 imagine as we walked out, we were discussing it. I,  
25 again, thought that it went well.

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- 1 I think some of us may have been maybe a little  
2 more leery than other as to what does this mean, what is  
3 coming next, that kind of thing.
- 4 Q. And by that, Jen, do you mean that you tended to look at  
5 this meeting in the fall in light of what Bert had said  
6 in the spring?
- 7 A. I think so, yeah. Yeah.
- 8 Q. Well, we're moving into 2004. Let's look at -- let me  
9 ask you: For the conclusion of the 2003 year, did you  
10 have any interaction with Board members about the  
11 subject matter of that meeting with Mr. Bonsell?
- 12 A. No.
- 13 Q. Any discussions with them about the biology text?
- 14 A. No.
- 15 Q. Or whether it would be purchased?
- 16 A. No.
- 17 Q. Did Bert Spahr say anything in the period after this  
18 meeting and before the close of calendar year of 2003  
19 about the meeting or the issues presented?
- 20 A. Other than what I just told you, again, maybe a little  
21 leery of what was coming down, what was coming next or  
22 if this was the end. Again, probably reiterated we  
23 thought the meeting went well, that kind of thing.
- 24 Q. And that is what I am getting at. Do you think that  
25 Bert Spahr remained apprehensive after the meeting or

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- 1 did she share the consensus that it seems to have gone  
2 well, or somewhere in between? Tell me if you had an  
3 impression.
- 4 A. I would say that Mrs. Spahr's personality is to always  
5 be apprehensive. I would say that she probably was  
6 apprehensive.
- 7 Q. What do you mean by that?
- 8 A. Well, she's --
- 9 Q. A pessimist?
- 10 A. Yes, I would say that she tends to be a pessimist, yes.  
11 At the same time, I think she was look out as Department  
12 head and was trying to look out for the teachers that  
13 were under her, again, that were nontenured and things  
14 like that.
- 15 I think she was looking ahead to try to keep the  
16 Science Department's best interests in mind.
- 17 Q. Sure. And the nontenured teachers I could see sort of  
18 figure prominently in her consideration. What was the  
19 concern, do you know? Was it discharge, or liability,  
20 or what was she worried about there?
- 21 A. I don't know if I would say discharge. Liability I  
22 would say is part of it. I don't know if it came up,  
23 but -- I can't speak for her. I couldn't necessarily  
24 say what she was thinking. But I think it was more of a  
25 liability issue with them not having tenure yet.

00041

- 1 Q. Looking at that fall meeting again, did the teachers  
2 explain whether or not this issue was even an issue for  
3 the students to Mr. Bonsell? And by this issue, I mean  
4 Evolutionary Theory.
- 5 A. That came up at some point. I am not sure if it was at  
6 that meeting or not. But at some point, I think we were  
7 asked did you ever have a problem in our classrooms.  
8 Like I said, I can't be sure if it was at that meeting  
9 or not. There was that discussion at some point.
- 10 Q. Do you recall -- I know this is hard, but I am just  
11 trying to prompt you.  
12 Do you recall whether Mr. Bonsell asked that  
13 question?
- 14 A. No, I don't remember that. I don't know if he did or  
15 not.
- 16 Q. You say he mentioned his son was going to be taking  
17 biology in the upcoming year. Is that a reference to  
18 the 2003-2004 school year?
- 19 A. Yes.
- 20 Q. We're in 2004. Let's just break it up into quarters.  
21 In the beginning of that year, January through March,  
22 did the biology text or biology curriculum come to your  
23 attention then as a big issue?
- 24 A. The only -- the thing that would have happened with the  
25 biology text, at that point again since we were up for a

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1 biology text, we would have put it in our budget again  
2 in January when our budget went in in January.

3 Most of my recollection of meetings I would say  
4 would fall after that. Sort of in the spring of 2004.

5 Q. Just in terms of the text selection process, do you  
6 recall whether there was any renewed examination of  
7 texts in 2004, or did you guys stick with what you had  
8 come up with in 2003?

9 A. There may have been renewed examination, asked if there  
10 was any updated versions or editions or things like  
11 that.

12 Q. How do you get that word of updated version? Do you  
13 have to make inquiry, or does the publisher tell you?

14 A. A little of both. Sometimes, the publisher if they know  
15 we are up for textbook selection will send up preview  
16 copies of editions.

17 Sometimes, we get catalogs, and we may call the  
18 publishers and ask for specific texts that we may want  
19 to look at.

20 Q. In the ordinary course of business, it would be sometime  
21 in this early part of the year that the Department would  
22 put in with the Board --

23 A. Yes.

24 Q. -- for inclusion of the text in the budget?

25 A. Yes. January is when we have to submit our budget to

00043

1 Mrs. Spahr.

2 Q. But at least for these first three months, no back and  
3 forth yet about the text?

4 A. No. Not that I can remember, no.

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

6 (A recess was taken.)

7 AFTER RECESS

8 BY MR. GILLEN:

9 Q. Let me ask you, Jen, we are looking at 2004 from January  
10 through March. Did you attend any School Board meetings  
11 during that period?

12 A. I don't remember. I don't remember if I did. If I did,  
13 I would have them in my documents -- well, if I saved  
14 them that is, if I saved the minutes. But I don't  
15 remember in particular.

16 Q. How about attendance at Board meetings just generally,  
17 do you have a practice of going as a general matter?

18 A. Not in general. There are occasions if a topic is going  
19 to come up. I remember a possibility of eliminating a  
20 position that a lot of teachers went. When the building  
21 project was, I went to those meetings.

22 When this topic came up that related to my  
23 textbook or my curriculum, I went.

24 Q. If we look at that as your sort of polestar there, a  
25 Board meeting coming up that would relate to your area

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- 1 of teaching and we look at 2003, did you go to any Board  
2 meetings in 2003 because you thought the biology text or  
3 biology curriculum would come up?
- 4 A. I don't believe so. There were occasions that I went,  
5 but I don't remember if it was because the textbook was  
6 going to come up or not.
- 7 Q. Was 2003 a big year for the building project?
- 8 A. I don't remember.
- 9 Q. Every year is a big year.
- 10 A. I don't think it was necessarily a big year for the  
11 building project, no. I couldn't tell you if I went to  
12 2003 or not. I don't remember.
- 13 Q. Then for this period say January through March of 2003,  
14 don't have any recollection of being --
- 15 A. I don't remember if I was there or not.
- 16 Q. If we look at the period between March and June of 2004,  
17 did anything occur during that period that touched on  
18 the biology text, biology curriculum?
- 19 A. As far as meetings and things?
- 20 Q. Yes.
- 21 A. Yes.
- 22 Q. Tell me what you can remember.
- 23 A. I don't remember how many meetings we had, but there  
24 were several meetings with the Board curriculum  
25 committee again that touched on how we teach Evolution,

00045

- 1 the textbooks, concerns with the textbook and things  
2 like that.
- 3 Q. Let's look at you said there's several meetings. How  
4 many during that period between March and June do you  
5 think?
- 6 A. I would say at least two or three.
- 7 Q. These are meetings with the Board curriculum committee?
- 8 A. Yes.
- 9 Q. Looking at this period between March and June of 2004,  
10 were there Department meetings apart from the Board  
11 curriculum committee meetings?
- 12 A. Yes. We would have Department meetings typically once a  
13 month or something, Science Department meetings.
- 14 Q. And your answer points to imprecision in my question.  
15 Were there Department meetings at which the biology text  
16 and biology curriculum were discussed?
- 17 A. I would assume that during one of the Department  
18 meetings -- no, it wouldn't have been then. It would  
19 have been fall of 2003 is when we would have been  
20 looking at biology textbooks and picking and sort of  
21 collaborating on which one we liked.
- 22 Q. Okay.
- 23 A. But specific Department meetings, I don't remember any  
24 that just dealt with that, no.
- 25 Q. Did it come up -- did the subject of biology text come

00046

- 1 up during Department meetings in this period between  
2 March and June?
- 3 A. I would imagine that they did. I can't remember  
4 specifically.
- 5 Q. Right.
- 6 A. But I would imagine that they did.
- 7 Q. All right. There's several Board curriculum meetings.  
8 Tell me what you can remember about those. The first  
9 one, any sense for what month that might be in if we  
10 look at April, May, and June?
- 11 A. My recollection is it seemed like a lot of them were  
12 towards the end of the school year. So it would have  
13 been May or June.
- 14 I remember specifically one was like on the last  
15 day of school. I remember that one because we were  
16 called to a meeting on the last day of school. I know  
17 that there were meetings prior to that, and I can't  
18 remember when specifically they were.
- 19 Q. You say several, what do you think during that period?
- 20 A. Including that one at the end, like I said, I think  
21 three, four.
- 22 Q. Tell me do you have distinct recollections like the  
23 first meeting and what occasioned that?
- 24 A. I remember a meeting I believe it was at the high school  
25 where again the topic of a textbooks came up and didn't

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- 1           like the way Evolution was presented in the textbook or  
2           Darwinism was presented in the textbook.
- 3   Q.       All right. Let's get a fix on who was there. This is  
4           2004.
- 5   A.       Right. The curriculum committee would have been Sheila  
6           Harkins, Bill Buckingham and Casey Brown.
- 7   Q.       All right.
- 8   A.       The Department -- I mean I know that for the most part,  
9           it was Mrs. Spahr and I and Rob Eshbach seemed to be the  
10          three that attended a lot of the meetings. I can't  
11          remember if other Department members were there. Some  
12          were there at some meetings and then others not. But  
13          the three of us were at most of the meetings.
- 14   Q.       You say at this meeting concerns were expressed about  
15           the text. Who expressed those concerns?
- 16   A.       We had gotten a list from Mr. Baksa of Mr. Buckingham's  
17           concerns with the textbook. He had pages with his  
18           concerns with paragraphs or things like that that were  
19           in the textbook.
- 20   Q.       When did you get that list?
- 21   A.       Again, I would assume it was around this time, spring  
22           some time.
- 23   Q.       When Mr. Baksa gave you that list, did Mike say anything  
24           else to you?
- 25   A.       I don't remember any specific quotes, but I believe we

00048

- 1 were to take a look at those pages and see if we could  
2 see what his concerns were, take a look at those pages.
- 3 Q. Did you look at the pages that were identified prior to  
4 the meeting?
- 5 A. I believe so, yeah.
- 6 Q. What were you trying to do when you looked at them, get  
7 a sense for the --
- 8 A. What his concerns were. Get a sense of what his  
9 concerns were with the textbook.
- 10 Q. I guess I am just trying to figure out how you would be  
11 able to do that. You are looking at pages. Was it a  
12 handwritten list you received?
- 13 A. I got both. I think I got both a handwritten and a  
14 typed list.
- 15 Q. Did you keep that?
- 16 A. I think it is in the packet, yes.
- 17 Q. That is the problem. Off the record.  
18 (An off-the-record discussion was had.)  
19 (J. Miller Deposition Exhibit 2 was marked.)
- 20 BY MR. GILLEN:
- 21 Q. Jen, I have shown you a document which we have marked as  
22 Miller 2. It is a set of pages really that you provided  
23 in response to my subpoena which speak in some way to  
24 the questions I have been asking you about the period  
25 sort of after March through June of 2004.

00049

- 1           Would you look through that and see if there is  
2 anything that helps you -- that you believe will help  
3 you recall the events of that period?  
4 A.       (Witness complies.)  
5 Q.       Is there anything? What I am interested in is the  
6 subject of these meetings during this period with the  
7 Board curriculum committee.  
8 A.       Yes.  
9 Q.       You have indicated that some concerns were expressed  
10 about the text, and you received a listing of pages. Do  
11 you find that?  
12 A.       Yes.  
13 Q.       What does it look like?  
14 A.       It says Curriculum Committee. It is written. And then  
15 the page behind that is the typed version.  
16 Q.       Excellent. And we are referring to a handwritten page  
17 first that has Curriculum Committee on the top and the  
18 date 6-4-04 on the right-hand top?  
19 A.       Yes.  
20 Q.       What is this, Jen?  
21 A.       This was a list of concerns -- written concerns from  
22 Mr. Buckingham.  
23 Q.       You received this from who?  
24 A.       Mr. Baksa.  
25 Q.       An then the document behind it is a typed version of it?

00050

- 1 A. Yes.
- 2 Q. Which has a first entry that begins with page 440 and a  
3 notation in the right-hand top that says given to Jen  
4 Miller.
- 5 Do you know, Jen, as you look at these documents  
6 now whether they were given to you at the same time?
- 7 A. My recollection is I got the typed version first and the  
8 written ones later.
- 9 Q. Let's look at this meeting where you were presented with  
10 a list of reservations about the text.
- 11 Did you have any discussion with anyone in the  
12 Science Department before going into this meeting with  
13 the Board curriculum committee?
- 14 A. We may have gone over these together, the pages and sort  
15 of looked at the pages in the book to see where his  
16 concerns were. I don't remember any particular  
17 discussions.
- 18 Q. That is what I was going to ask you. Did you and your  
19 colleagues reach a consensus about these pages and their  
20 contents before going to this meeting?
- 21 A. I believe so, yes.
- 22 Q. Tell me what that was.
- 23 A. As far as what we thought his concerns were?
- 24 Q. His concerns and your response.
- 25 A. Most of his concerns seemed to deal with man's evolving.

00051

- 1 I remember we also mentioned that he looked at the  
2 teacher's edition, and some of these concerns were the  
3 teacher to teacher section, or where it says applying  
4 concepts or something like that may have been only in  
5 the teacher's edition. It would not have been seen in  
6 the student edition that the students would have gotten.
- 7 Q. Was the general sense that, again, some of the concerns  
8 were misplaced?
- 9 A. I don't know exactly what you mean by misplaced.
- 10 Q. In light of what you just described, if it is the  
11 teacher's manual and not in the student's version, that  
12 is kind of not a real issue.
- 13 A. Right. But the teacher would be the only one privy to  
14 that information. The students wouldn't see it. If  
15 they were concerned with what the students would see,  
16 that wouldn't necessarily be an issue.
- 17 Q. Tell me what happened when you got into the meeting.  
18 How did it begin?
- 19 A. I am sure there was an introduction of everyone. Oh,  
20 my! I don't know specifically. Like I said, some of  
21 these run together of different meetings.
- 22 Q. Do you recall Mr. Buckingham saying anything?
- 23 A. At some of these meetings, I know there was some heated  
24 exchange between Mrs. Spahr and Mr. Buckingham.
- 25 Q. Well, we have got two different pages and two meetings.

00052

- 1 This meeting -- the one that is dated indicates 6-4-04.  
2 The one that is not dated, can't speak to that.  
3 Are you looking at the typewritten page?  
4 A. Yes.  
5 Q. And you believe you received that first?  
6 A. I believe that I saw this before the handwritten  
7 version.  
8 Q. Do you remember if this first meeting during this period  
9 is the one where there was this heated exchange or not?  
10 A. I think so, yes.  
11 Q. Tell me about that.  
12 A. Somehow it got around to the history of the mural that  
13 was taken down from a room in the Science Department --  
14 or in the science classroom. And I think Mr. Buckingham  
15 stated that -- I think Mrs. Spahr asked him if he saw  
16 the -- apparently, the mural was burned and asked him if  
17 he knew who had burned it.  
18 And he stated something like -- something to the  
19 effect that he gleefully saw it burn or something like  
20 that. So I remember that part of it.  
21 Q. How did that come up?  
22 A. Again, looking at the issues with the textbook, like I  
23 said, a lot of them had to do with man's Evolution.  
24 Again, it kept coming up.  
25 I know Mrs. Spahr said several times if I hear the

00053

1 word monkeys to man again, I am going to scream or  
2 something. We kept hearing monkeys to man, monkeys to  
3 man. And we kept explaining that that is not the part  
4 of Evolution that we taught.

5 And I know it came up something about the mural.  
6 How can you explain the mural being in the classroom  
7 which depicted what you typically see of the monkeys  
8 going to man? You have seen that picture. A student  
9 had done that. How can you say that you don't teach it  
10 when that mural is in the back of the room?

11 Somehow it came around to that mural being in the  
12 back of the room.

13 Q. Apart from this exchange that you have recounted,  
14 anything else that sticks out from that meeting?

15 A. I think it was our first meeting. I remember -- after  
16 that heated exchange, I remember at the end of that  
17 meeting, Mr. Buckingham and Mrs. Spahr shaking hands or  
18 something and saying no hard feelings, that type of  
19 thing at the end of the meeting.

20 As I said before, most of these meetings where  
21 they might have been heated during the meeting, we  
22 always left feeling that we had accomplished something  
23 or that we had explained our position, that kind of  
24 thing.

25 Q. Let me ask you about that. Did Sheila Harkins say

00054

1 anything?

2 A. Again, I don't know which meeting it was. I remember  
3 Sheila being there, and we were looking at textbooks. I  
4 think at that time, we were looking at other family and  
5 consumer science textbooks. We may have had some family  
6 and consumer science people here also.

7 I remember her pointing out the family and  
8 consumer science textbooks, that they weren't -- they  
9 weren't different enough from the last edition to  
10 warrant ordering a new one.

11 Then I remember her saying something about the  
12 biology textbooks, that she fell asleep reading it so  
13 she doesn't really know much about the biology because  
14 she fell asleep reading that. I remember that.

15 Her concern -- I would say where she was coming  
16 from most often in the meetings was cost of textbooks or  
17 did it warrant getting new ones, were they different  
18 enough from the old ones to order new textbooks.

19 I would say hers was more of a fiscal -- looking  
20 at the fiscal end of it than others.

21 Q. How about Casey Brown; when Mr. Buckingham's  
22 reservations were discussed, did she say anything?

23 A. I am sure she did. I don't know. I seem to remember  
24 her saying -- sort of echoing what we saw in the Dr.  
25 Peterman memo, you know, whose religion are we going to

00055

1 teach? The topic of religion came up somehow. Like I  
2 say, I can't remember all the details. I don't remember  
3 anything specific that she said necessarily.

4 Q. Well, it sounds like you explained to Mr. Buckingham  
5 what you had explained to Mr. Bonsell, which is we don't  
6 get into that?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes. I would say we did that several times.

10 Q. You say that you left the meeting feeling that -- having  
11 a similar sense that concerns had been addressed?

12 A. Yes.

13 Q. Was there any other discussion at the meeting that you  
14 can recall now? Did any of your peers speak up?

15 A. I imagine that they did. I know Mrs. Spahr spoke. I  
16 also remember discussions during this time, again  
17 concerns that we don't -- constantly the monkeys to man  
18 and Evolution is not a fact came up.

19 Over these meetings I believe is where we came up  
20 with the compromise that we would be willing to point  
21 out that Darwin's Theory is not necessarily a fact; that  
22 there are parts of Darwin's Theory that don't have as  
23 much evidence as others.

24 Again, we left that thinking that that was a  
25 compromise on our part. We would be willing to do that.

00056

- 1 Even though we already did it, let's put it in the  
2 curriculum that states that. We explained we already do  
3 that.
- 4 So through these meetings, somewhere came the  
5 change in the curriculum that said that gaps --
- 6 Q. Students will be made aware of gaps and problems?
- 7 A. Right, in Darwin's Theory. Somewhere in that time frame  
8 is where that came out.
- 9 Q. Let me ask you: Do you remember having received any  
10 materials in connection with these meetings during the  
11 spring period, DVD's, videotapes?
- 12 A. Yes, yes. We got an -- I don't remember who it was  
13 from, but Mr. Baksa brought over to the Science  
14 Department. One of the last days of school, we sat down  
15 and watched a videotape. I believe it was called Icons  
16 of Evolution that we had watched that was given to us by  
17 -- I am remembering Buckingham that got the tape and  
18 gave it to us.
- 19 Q. Anything else? Did you see Of Pandas as of that time?
- 20 A. I don't believe so.
- 21 Q. You mentioned that Bert Spahr said monkeys to man, I  
22 don't want to hear that again. Did Mr. Buckingham  
23 express any other concerns about the presentation of the  
24 text not being balanced?
- 25 A. The main focus was the Evolution of man, and again, the

00057

- 1 origins of life issues that we talked about before.
- 2 Q. You said there was some discussion of the theory being  
3 presented as a fact. Did Mrs. Brown say anything on  
4 that point?
- 5 A. I can't remember anything specific that she would have  
6 said, no. No quotes or anything like that.
- 7 Q. Did you come away from these meetings in the spring with  
8 a sense of where Casey Brown stood with respect to  
9 presenting other theories?
- 10 A. Well, not necessarily other theories. I know at one  
11 point, Mr. Baksa -- I can't remember when this was, the  
12 summer or spring, when it was. Someone -- I think it  
13 was Mr. Baksa mentioned to me that she was having him  
14 read books on existentialism or something like that.
- 15 If we -- I don't know. Whether or not she was  
16 going to push that, we didn't know. But I would say  
17 that she was -- it seemed that she was sort of in  
18 opposition to the other Board members I guess in their  
19 concerns, that she didn't have some of those same  
20 concerns I guess. Other than that, I mean nothing in  
21 particular.
- 22 Q. Let's look at it maybe in terms of the materials from  
23 Discovery Institute. You say you went over a videotape  
24 that you think was called Icons of Evolution.  
25 Did you get any DVD's at that time?

00058

- 1 A. That is the one I can remember. I don't remember any  
2 others.
- 3 Q. How about you mentioned some consideration of other  
4 texts; what do you recall touching on that?
- 5 A. When we considered texts to put into the budget, we  
6 looked at the prominent publishers. But we were given  
7 copies of books that were used by other local Christian  
8 schools and what textbooks they used.
- 9 Q. Do you know who provided that?
- 10 A. Mr. Baksa.
- 11 Q. Do you know whether -- do you recall Mr. Buckingham ever  
12 requesting that?
- 13 A. I wasn't -- I don't remember if that came out of a  
14 meeting or anything, no, that I was in attendance.
- 15 Q. In the packet that you have given us, there is a  
16 document that says Survey of Biology Books Used in Area  
17 Schools. Is that the document you are referring to,  
18 Jen?
- 19 A. Yes.
- 20 Q. Behind that in the packet that we have marked Exhibit 2,  
21 there is a Product Profile that references a text  
22 Biology put out by Bob Jones University Press.  
23 Do you recall any discussion of that text?
- 24 A. If I remember correctly, this came out of, again, one of  
25 the meetings. My recollection is for some reason, I

00059

1 think Bonsell -- I may be wrong -- mentioned that there  
2 may be other textbooks out there that we could look at.  
3 This was given to us by Mr. Baksa so I was assuming he  
4 researched specific ones.

5 I don't know if he was told to research certain  
6 ones or not, but this was given to us by him.

7 Q. How about any discussion of this text we are looking at  
8 Biology by Bob Jones University Press, was that actually  
9 discussed, or did you just get the piece of paper?

10 A. I don't believe that it was discussed at a meeting -- at  
11 a specific Board curriculum meeting. I think Mr. Baksa  
12 may have said to me or others, that this one we can't  
13 use because of the context of it being specifically  
14 Christians and God and things like that.

15 Q. Further down in this packet, there is a chart entitled  
16 Beyond the Evolution Versus Creation Debate. You have a  
17 notation on the top here that says given to me by Baksa,  
18 spring 2004.

19 What do you recall about this document, Jen?

20 A. I found these documents in the front of my preview copy  
21 of the textbook. So I don't think there was much  
22 discussion, or maybe given to us saying look these over.  
23 I don't believe there was much discussion about them.  
24 This is sort of food for thought or background  
25 information.

00060

1 I don't remember specific discussions of them.  
2 Q. Preview copy of the text, you are referring to the text  
3 Biology by Miller and Levin?  
4 A. Yes.  
5 Q. And by this time, was it clear that the Department was  
6 in favor of purchasing that text?  
7 A. Yes.  
8 Q. Let's look at the Board meetings in June?  
9 A. Board meetings?  
10 Q. Yes. Let's see what you recall about those Board  
11 meetings. Did you go to the Board meetings in June?  
12 A. Yes.  
13 Q. Of 2004?  
14 A. Yes.  
15 Q. Was there a particular reason?  
16 A. Again, I knew the biology textbooks were coming up as a  
17 discussion item. I don't remember if they were a vote  
18 item at that point or not. I don't recall if it was or  
19 not.  
20 I remember the June 14th meeting. There were a  
21 lot of teachers there because Dr. Peterman had told us  
22 that there was a possibility that they were eliminating  
23 an English position somewhere. She said for teachers to  
24 come and show support for them not to eliminate the  
25 position. I remember that meeting, that there were a

00061

1 lot of us in attendance.

2 Q. I am going to give you sets of what I think you kindly  
3 provided to me which I think based on what you told me  
4 is a grouping of Board minutes that you had; is that  
5 right?

6 A. Yes.

7 Q. Do you recognize those, Jen?

8 A. Yes.

9 Q. If you look at this packet, it starts with minutes for  
10 June 7th, 2004.

11 (J. Miller Deposition Exhibit 3 was marked.)

12 BY MR. GILLEN:

13 Q. Now, Jen, I am showing you a packet of Board minutes  
14 that have been marked as Exhibit 3 which were minutes  
15 you provided to me in response to the subpoena. You  
16 know, as well as I, that they start with minutes for  
17 June 7th.

18 And there is a notation in the upper right-hand  
19 corner of the first set of minutes for June 7th of SB.  
20 Do you know whose handwriting that is?

21 A. The handwriting I believe is when we went through and  
22 got our information together for the subpoenas, we went  
23 through and wrote whose copy this was. It was probably  
24 mine or Rob's notation that this was from Sandi Bowser.  
25 We got this from -- her minutes from Sandi Bowser.

00062

- 1 Q. And there are handwritten notations on this first set of  
2 minutes for June 7th, 2004. Did you put them on, or  
3 were they on Sandi Bowser's copy?  
4 A. Those would have been Sandi Bowser's notations.  
5 Q. Were you at the June 7th meeting?  
6 A. I am looking at what occurred.  
7 Q. In terms of science books, I note the chemistry book was  
8 up.  
9 A. Looking at this, it doesn't seem familiar. So I would  
10 say that I was not at this meeting.  
11 Q. The next set of minutes then does relate to June 14th,  
12 2004. There is a notation in the upper right-hand  
13 corner SB. I take it Sandi Bowser provided those  
14 minutes?  
15 A. Yes.  
16 Q. And therefore, it is her handwriting that is on the  
17 minutes?  
18 A. Yes.  
19 Q. Were you at this Board meeting?  
20 A. Yes.  
21 Q. Tell me what you recall about that Board meeting.  
22 A. Well, I remember my picture being on the front of the  
23 paper for this one looking very confused. I have --  
24 actually, I could tell you better. I don't know why  
25 they are not in here.

00063

1

I have minutes of this meeting.

2

Q. There is a second set I was going to ask you about.

3

A. That is Rob's.

4

Q. So the second set of Board minutes of June 14th with the smaller handwriting --

5

A. Yes.

6

Q. -- and notation tolerance does not mean acceptance --

7

A. Yes.

8

Q. -- that appears to be Rob Eshbach's?

9

A. Yes. I know I have notes on this one. But this meeting

10

I remember is the one that Mrs. Buckingham stood up and

11

spoke. She quoted Bible verses during the public

12

comment section.

13

This is the one where Mr. Buckingham -- I believe

14

this is the one where he was asked -- he mentioned -- I

15

think this is the one where he was asked to tone down

16

some of his remarks from previous meetings.

17

Q. Who asked him to do that?

18

A. I think he just made the statement that he was asked. I

19

don't know who asked him. I don't know. But I remember

20

him saying something to the effect that I am who I am,

21

and if you don't like it, you can vote me out at that

22

meeting.

23

And that was the meeting that he said 2,000 years

24

ago, someone died on the cross. Someone needs to stand

25

00064

1 up for him or something to that effect.

2 Q. You mentioned that you think you have notes relating to  
3 this meeting?

4 A. I do.

5 Q. Is that true, Jen?

6 MS. PENNY: Can we go off the record one second?

7 MR. GILLEN: Sure.

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

9 (A recess was taken.)

10 AFTERNOON SESSION

11 MR. GILLEN: Please mark these.

12 (J. Miller Deposition Exhibits 4 through 6 were  
13 marked.)

14 BY MR. GILLEN:

15 Q. Jen, I have given you packets of documents marked Miller  
16 4 through 6. I ask you to take a quick look through  
17 them and let me know if they appear to be the documents  
18 that you provided to me this morning.

19 A. Yes.

20 Q. Now let's return our attention to the June, 2004 period  
21 and that portion of Exhibit 3 which is your notes from  
22 the June 14th meeting.

23 What I would like to do is go through those and  
24 have you tell me what these notations reflect and to the  
25 extent you can any memories they prompt. The page I am

00065

- 1 looking at is entitled The Cutting Edge Hair Styling  
2 Salon. There is June 24th below that heading. Above  
3 the stationery that has been Xeroxed is the notation my  
4 notes from June 14th Board meeting.  
5 Are those your notes, Jen?
- 6 A. Yes.
- 7 Q. Tell me what those notations reflect.
- 8 A. Most of these are comments that were made. I tried to  
9 write down things that people said at the meeting,  
10 either Board members, or sometimes it was public  
11 comment, that kind of thing.
- 12 Q. So the first one is Bonsell, Intelligent Design Theory.  
13 What is that?
- 14 A. I am thinking that he mentioned Intelligent Design  
15 Theory at the meeting, and I may have put a question  
16 mark behind it because of the word theory. That was my  
17 notation that, you know, I didn't believe it was a  
18 scientific theory.
- 19 Q. Let me ask you: Prior to this June 14th notation, had  
20 you heard of Intelligent Design?
- 21 A. I don't have anything written down so it was about this  
22 time that the Intelligent Design issue came up.
- 23 Q. And your comment seems to indicate that there was some  
24 reflection on the topic. Prior to this June 14th  
25 meeting, had you done any research prior to that

00066

- 1 meeting?
- 2 A. I don't believe so, no.
- 3 Q. Looking at it in light of those observations you have  
4 just made, do you think that you would have had a  
5 question about Intelligent Design and its status as a  
6 theory on this day?
- 7 A. Yes, I think that's why I had the question marks. It  
8 was either that reason or that I hadn't heard of it  
9 before.
- 10 Q. How about papers should stick to reporting the facts,  
11 does that trigger any --
- 12 A. That was something Bonsell had said addressing the  
13 newspaper reporters, that they should stick to reporting  
14 the facts.
- 15 Q. Mistrust between students, parents and teachers, does  
16 that trigger anything?
- 17 A. Just that he may have said something that maybe them not  
18 reporting the facts or that because of this, there is a  
19 mistrust between the students, parents and teachers.
- 20 Q. You have a notation for Casey. I take it Casey Brown?
- 21 A. Yes.
- 22 Q. One nation, equal rights, sworn to uphold the law, set  
23 aside personal beliefs, does that trigger any  
24 recollections on your part?
- 25 A. She quoted that or she said that at the meeting.

00067

- 1 Q. And a notation with Noel, I take it Noel Wenrich?  
2 A. Yes.  
3 Q. Says all teach of a creation?  
4 A. By that I remember that he mentioned all religions, no  
5 matter what religion it is, teach of a creation of some  
6 sort or a creator of some sort.  
7 Q. Do you have any recollection as to how that came up?  
8 A. During this time, there was a lot of public comment and  
9 comment in the newspaper about the textbooks. And I  
10 know the quote was in there about being laced with  
11 Darwinism and that kind of thing.  
12 Creationism came up. I don't remember how  
13 exactly, but it was part of these conversations at the  
14 Board meetings.  
15 Q. Let me ask you: Do you remember Barrie Callahan being  
16 at these Board meetings?  
17 A. Yes.  
18 Q. Do you have any recollection of Mrs. Callahan accusing  
19 Mr. Buckingham of wanting to teach Creationism?  
20 A. I was thinking I had -- no, not in this meeting. I  
21 didn't quote her as saying anything. I don't remember.  
22 I know she spoke several times. If I don't have it  
23 written down so I don't remember if she said anything.  
24 Q. Can you recall anything about her comments?  
25 A. I know -- again, I don't know what meeting this was at.

00068

1 I guess this would have been afterwards. I remember her  
2 making a comment something about the origin of life and  
3 Intelligent Design.

4 On the curriculum, it says no origins of life will  
5 be taught. She said it is contradictory to say no  
6 origins of life will be taught and then put Intelligent  
7 Design into the curriculum.

8 That was later. So I don't remember anything in  
9 particular at these meetings.

10 Q. If we flip to the next page, it has a notation on the  
11 top Evolution with a sort of cloud circle around it.  
12 Not origin of life, change over time.

13 Is that your notation?

14 A. Yes, that is just probably my thoughts. I tend to write  
15 things down. As people are speaking, I write my  
16 thoughts or my sort of response to them even though I  
17 don't speak it.

18 I think this was my response to things that I had  
19 heard. That Evolution was -- I don't see -- as I have  
20 told them in curriculum committee meetings, Evolution is  
21 not the origin of life. It simply means change over  
22 time. And that is what we teach.

23 Q. Beneath the notation I just referenced, there is another  
24 comment appalled at saying I'm not a good Christian.

25 Was that your observation, Jen?

00069

1 A. Yes.

2 Q. Why did you write that?

3 A. Something was said about that we -- again I think I said  
4 this before that something -- well, 2,000 years ago  
5 someone has to stand up -- someone needs to stand up for  
6 him.

7 It came out at these meetings basically if you are  
8 not willing to stand up against this Evolution and not  
9 willing to stand up against it, then you are not a good  
10 Christian. I wrote that as they pointed to me that I am  
11 appalled at someone telling me that I am not a good  
12 Christian because I don't stand up for this.

13 Q. You took offense at the implication you couldn't be a  
14 good Christian and believe in Evolution?

15 A. Right.

16 Q. The next page starts with a notation attributed to  
17 Buckingham - found on Christianity, can't take away my  
18 right to practice. Trace your history, and if you find  
19 a monkey, let me know.

20 I think I know what that notation reflects, but I  
21 will ask anyway because I have to. Does that trigger  
22 any recollections on your part, Jen?

23 A. Again, at some point, I don't know what part of the  
24 meeting this was, but Mr. Buckingham stated just what I  
25 have there that this country was founded on

00070

1 Christianity, and you can't take away my right to  
2 practice.

3 And again going back to the monkeys and man issue,  
4 he said trace your history. If you find a monkey in  
5 your past, let me know.

6 Q. And at the bottom of that page there's a notation that  
7 begins Trudy. Is that Trudy Peterman?

8 A. Yes.

9 Q. There is a reference there to Bible Club. Does that  
10 trigger any recollection on your part from this meeting?

11 A. She stood up and basically reiterated what now I know is  
12 in that memo. One of her point was, you know, that if  
13 religion is to be taught, whose religion are we going to  
14 teach? That we can't single out one religion over  
15 another, that type of thing.

16 Those people that want to practice their religion  
17 in school, we do have a Bible Club and that kind of  
18 thing for that forum.

19 Q. Apart from the notations that you have here, do you  
20 recall anything specifically said by any Board member?

21 A. Just as I said, the 2,000 years ago. I don't have that  
22 noted on here, but I am sure that that was said at this  
23 meeting.

24 Q. How about anything by Alan Bonsell besides the  
25 Intelligent Design comment?

00071

- 1 A. Not that I remember, no.  
2 Q. Sheila Harkins?  
3 A. No.  
4 Q. Angie Yingling?  
5 A. Not at this one, no.  
6 Q. How about Jane Cleaver?  
7 A. No.  
8 Q. You have one comment attributed to Noel Wenrich. Do you  
9 remember anything else he might have said?  
10 A. Not at this meeting, no.  
11 Q. So this is the second meeting in June. I want you to  
12 look now at Exhibit 4.  
13 A. (Witness complies.) All right.  
14 Q. If you look at the second page of Exhibit 4, it has the  
15 number one circled in the right-hand corner. If you  
16 look there, you will see a notation to June, 2004 and a  
17 curriculum committee meeting?  
18 A. Yes, I see it.  
19 Q. Does that notation reflect your sense of whatever  
20 understanding you had coming away from that meeting?  
21 A. Yes. And I believe if I remember correctly, that was  
22 the day of the Board meeting because I think that that  
23 was the very last meeting we had of the school year.  
24 That would have been the 14th, and we went to the Board  
25 meeting that night.

00072

- 1 Q. Now that puts us into July. I see that on the last page  
2 you just referred to, page number one in Exhibit 4,  
3 there is a notation there relating to July, 2004?  
4 A. Yes.  
5 Q. It references a new edition of the Miller and Levin  
6 text?  
7 A. Yes.  
8 Q. Tell me about that.  
9 A. Again when we left the June meeting, we were assured  
10 that we would get our books. And then somehow I found  
11 out -- I was in the District in July -- middle of July,  
12 I think it was around the 18th or 19th because I was in  
13 charge of planning the inservice time for this year. I  
14 was in the District.  
15 And I don't remember if -- I am pretty sure Mrs.  
16 Spahr called me at home one evening and said that they  
17 passed on the books some time in here, end of June,  
18 early July they passed on approving the books because  
19 there was a new edition that came out.  
20 It was no use ordering a 2002 edition when the new  
21 one had just come out.  
22 Q. And they is the Board?  
23 A. Yes.  
24 Q. So what happened next?  
25 A. Somewhere around there, I think it was the second day I

00073

- 1 was here for planning those inservices, we met with --  
2 it was either in Dr. Nilsen's or Mr. Baksa's office, we  
3 page by page, chapter by chapter, line by line went  
4 through the evolution chapters in the 2002 edition and  
5 2004 edition to review if there was any difference  
6 between 2002 and 2004.
- 7 Q. If you would, Jen, please look at Miller Exhibit 2 for  
8 this page which is entitled Changes in 2002 and 2004  
9 Copyright Biology books from Prentice Hall.
- 10 A. (Witness complies.)
- 11 Q. Looking at that, Jen, does that reflect your findings as  
12 a result of the examination you have just described?
- 13 A. Yes.
- 14 Q. And apart from the notations here -- or tell me in  
15 general what sense you had about differences in the two  
16 texts.
- 17 A. We felt that the 2004 edition as far as this controversy  
18 goes was much -- I don't know if I want to say it  
19 didn't -- it seemed to be aware of the controversy  
20 because I thought it took a lot of the more  
21 controversial statements out and replaced them with sort  
22 of blander language if you want to say it that way.
- 23 Q. Let me ask you: In terms of concern that had been  
24 expressed about presenting theory as fact, did you see  
25 the changes addressing the manner of presentation of

00074

1 Evolutionary Theory?

2 A. Yes. And even a lot of Mr. Buckingham's concerns that  
3 he had given us originally with some of the references  
4 to man's Evolution were taken out, or -- you know, the  
5 wording was much better, less controversial.

6 Q. I want to make sure I understand you there, Jen. Would  
7 you say that the wording was changed in such a way as to  
8 make assertions in that area seem more tentative? Let  
9 me put it this way: Less factual and more theoretical?

10 A. Not -- not necessarily. Maybe to some extent. But I  
11 don't -- I guess because coming -- me looking even at  
12 the 2002 edition, I didn't see it necessarily as it was  
13 presented as a fact in the first place. That was  
14 somebody else's concern.

15 Me looking at it, I wouldn't say that necessarily.  
16 But for someone else looking at it that had concerns,  
17 then maybe they could see it that way.

18 Q. That is all I am getting at. You had a sense that the  
19 changes addressed his concerns. I am trying to figure  
20 out how.

21 A. Yes, I am trying to look over some of the things to give  
22 you an example. Here like at number three instead of  
23 whatever it was presented as evidence of Evolution, it  
24 was replaced with could finally explain many of his  
25 observations. It just looks like it is not as strong

00075

1 language I guess you want to say.

2 It did seem like there was more that pointed out  
3 some -- that made sure they pointed out where the gaps  
4 were, or where there was less evidence in the field of  
5 Evolution than the previous edition did.

6 Q. Okay. Did you have any discussion with Mr. Buckingham,  
7 yourself, about these findings?

8 A. No.

9 Q. I think you said that you sat down with Bert Spahr and  
10 Mike Baksa?

11 A. Yes.

12 Q. And I see here at the head of this page, there is a  
13 notation July of 2004?

14 A. Yes.

15 Q. Is that the time of the meeting?

16 A. Yes. I remember somewhere around the 18th or 19th.

17 Yes, because I think that was the days I was here to  
18 plan the inservices.

19 Q. Do you recall anything that Bert Spahr said during the  
20 meeting?

21 A. No, nothing in particular, other than the books hadn't  
22 been, you know, approved because of the 2004 edition.  
23 Nothing in particular.

24 Q. How about Mike Baksa, do you remember anything that he  
25 said?

00076

- 1 A. We were pretty much in agreement that this seemed to  
2 present it in a much less controversial way, but I don't  
3 know.
- 4 Q. Did you anticipate any action as a result of your  
5 meeting when you left this meeting?
- 6 A. I remember thinking that they should be -- having a  
7 discussion that the Board should be more satisfied with  
8 this edition perhaps than they were with the 2002  
9 edition.
- 10 This is the time when I was here that Mr. Baksa  
11 gave me a copy of Of Pandas and People to read, this  
12 meeting.
- 13 Q. Thank you. I was going to ask you about that. This  
14 meeting was kind of mid July?
- 15 A. Yes.
- 16 Q. Do you recall any discussion of Of Pandas at that time?
- 17 A. No. I think I was given the book, asked to take it  
18 home, read over it, get back to him and tell him what I  
19 thought, that kind of thing.
- 20 Q. Was Bert Spahr given a copy as well?
- 21 A. I don't recall at that meeting if she was or not. I  
22 know she read it because I remember her making specific  
23 comments about certain parts of the book later on. But  
24 I don't remember if it was at that meeting or not.
- 25 Q. Did you get back to Mike with feedback about your

00077

- 1 opinion on Of Pandas?
- 2 A. I don't think that -- I know that my opinions were made  
3 at another meeting in the fall. I don't remember if we  
4 were in contact before then, before school was back in  
5 session about the Of Pandas book.
- 6 Q. Let's look at Exhibit 3, the minutes for the July 12th  
7 meeting. Did you attend that meeting?
- 8 A. I would have to look.
- 9 Q. Okay.
- 10 A. July 12th?
- 11 Q. Yes.
- 12 A. The minutes are not in here in Exhibit 3.
- 13 Q. There is an SB set.
- 14 A. There, they are. Okay. Let me see.
- 15 Q. I see you have no notes from the meeting?
- 16 A. Right.
- 17 Q. I am just wondering if you may have attended and taken  
18 no notes.
- 19 A. I do not believe I was at that meeting because as I see  
20 here in the minutes, that was the meeting where they  
21 tabled to the next meeting the approval of the textbook.  
22 I was not at that meeting.
- 23 Q. Good enough. That brings us to the August 2nd meeting.  
24 Did you go to that one?
- 25 A. No, I was on vacation at that time.

00078

- 1 Q. You picked a good time to be on vacation. When did you  
2 return from vacation?
- 3 A. It was somewhere shortly after there. It was the first  
4 week of August that we went. We left like July 31st.
- 5 Q. Upon your return, were you greeted with any news  
6 relating to the biology text or the biology curriculum?
- 7 A. Yes. I believe -- I think it was Rob Eshbach told me  
8 that at that meeting, Mrs. Harkins said something --  
9 they mentioned the Of Pandas book, and she mentioned  
10 that I had the copy, and I had had it for several weeks.  
11 And she didn't get a chance to look over it because I  
12 had the copy.
- 13 So I don't remember if I was in contact with Mr.  
14 Baksa, if he asked for me to bring it back, or did I  
15 have a chance to look over it. But I did bring it back  
16 in at some point.
- 17 Q. At some point?
- 18 A. Yes.
- 19 Q. Let me ask you a question. If you look at Miller 4 and  
20 the page with the one circled in the upper right-hand  
21 corner, there is a notation down there relating to  
22 August, 2004 Board vote?
- 23 A. Yes.
- 24 Q. Where did you get that information?
- 25 A. That's Bertha Spahr's handwriting. She put it in the

00079

- 1 timeline. I do remember them telling me that the -- at  
2 that meeting, I mean this is what I was told, that they  
3 were up to approve the biology textbooks again, and  
4 Mr. Buckingham said he would approve it if Of Pandalas and  
5 People was also approved as a supplemental text.  
6 There was a five/three split, and someone  
7 switched, and it was four/four. And they approved the  
8 textbooks finally.
- 9 Q. Let me ask you, Jen, Miller 4, is that a document that  
10 you created?  
11 A. On top?  
12 Q. Yes, the first page of four.  
13 A. No, that is Mrs. Spahr's handwriting.  
14 Q. You have indicated that the next page is as well?  
15 A. Yes.  
16 Q. Was this created by her?  
17 A. Yes. We had input. I mean as we tried to remember  
18 dates, we sat down together and tried to remember when  
19 did this happen, when did this happen.  
20 Q. That's fine. There is a reference on page two of  
21 Exhibit 4 to an August 30th, 2004 curriculum committee  
22 meeting?  
23 A. Yes.  
24 Q. Did you attend that meeting?  
25 A. Yes.

00080

- 1 Q. Now let's look at the time in August between your return  
2 from vacation and prior to this meeting. Had you had  
3 any discussions with Bert Spahr about Of Pandas?  
4 A. I believe so. I believe she had read it. And whether  
5 it was on the phone, probably a phone conversation,  
6 discussing sort of our thoughts as we read it.  
7 Q. You had reviewed it as of this telephone conversation?  
8 A. Yes, yes.  
9 Q. What did Bert Spahr tell you about her opinion  
10 concerning Of Pandas?  
11 A. I remember her pointing out some of the science was  
12 faulty in it. I remember her saying something I think  
13 it was Oparin Theory, that was a chemistry theory, and  
14 she was upset at how they portrayed that.  
15 Q. Did she say why?  
16 A. I don't remember the chemistry of it.  
17 Q. It was a chemistry related --  
18 A. Yes, yes. I think that is who it was. But also that  
19 she was having trouble reading it because the level was  
20 very high.  
21 And I had done -- during this time before this  
22 August 30th meeting, I had done a readability study on  
23 it -- two different readability studies online. So we  
24 discussed that also.  
25 Q. How do you do that, Jen?

00081

- 1 A. You go on -- it is a typical when you are reviewing  
2 textbooks -- we learned this in our undergraduate study  
3 -- when you are reviewing textbooks, you look at a  
4 readability, and it tells you what grade level it is  
5 geared towards.  
6 You put in how many words in a sentence and how  
7 many syllables in each word. You have to count them out  
8 and things like that. And it gives you a grade level of  
9 the Of Pandas book.
- 10 Q. Apart from what Bert said about this chemical theory,  
11 did she say anything else?
- 12 A. The two big things I can remember is that, you know, a  
13 lot of the things were -- some of the inferences made  
14 was, you know, bad science and the reading level. Those  
15 are the two things that I can remember.
- 16 Q. How about you for your part?
- 17 A. Some of the same things. I remember having sticky  
18 notes. I took them out when I gave them back. I don't  
19 know where they are now. I remember having sticky notes  
20 pointing to things and having questions about certain  
21 parts. I know that I don't have those anymore. I can't  
22 say specifically, but.
- 23 Q. That is all right. Did you talk to any of your other  
24 colleagues about Of Pandas prior to this August 30th  
25 meeting?

00082

- 1 A. Not that I can remember.
- 2 Q. Did you talk to my Board members?
- 3 A. No.
- 4 Q. How about any other of the plaintiffs?
- 5 A. No.
- 6 Q. How about Barrie Callahan?
- 7 A. No.
- 8 Q. We have a note indicating there was an August 30th  
9 curriculum committee meeting. Do you remember that?
- 10 A. Yes.
- 11 Q. Tell me what you can remember about that.
- 12 A. That was a meeting -- again, we were talking mainly  
13 about the Of Pandas and People book. And if I am not  
14 mistaken, this is the meeting that the curriculum  
15 committee was there. And Mr. Bonsell was there, too.
- 16 This is one of them -- it might have been the next  
17 one that he was at back from the 2003 meeting, and we  
18 were discussing -- we, the Science Department, and again  
19 probably mostly Bertha Spahr and I were the spokesmen  
20 there. I don't remember exactly who all was there.
- 21 We were discussing the Of Pandas book. Our  
22 concerns with the readability study, our concerns with  
23 some of the science of it in the textbook. The  
24 readability was definitely not appropriate for a ninth  
25 grade level.

00083

1           And I remember Bertha asking again point blank to  
2 Mr. Buckingham if he could explain some of the things in  
3 there. And he mentioned that any good student will go  
4 home and look it up. You don't need to understand it as  
5 you are reading it.

6           That point -- at some point, I believe Dr. Nilsen  
7 was at that meeting. My recollection is that his  
8 suggestion was sort of a compromise, that we place the  
9 books in the classroom as a reference and not  
10 necessarily hand it out to each student.

11           I do remember Mr. Bonsell I believe at that  
12 meeting because I believe Mr. Buckingham did leave early  
13 for some doctor's appointment at that meeting, and  
14 Mr. Bonsell saying after he left not every Board member  
15 is in agreement with Mr. Buckingham that it should be in  
16 the hands of every student. That maybe placing it as a  
17 reference would be a better use of the textbook.

18 Q.       Okay. Let's see. Do you remember anything -- do you  
19 know if Sheila Harkins was there?

20 A.       Yes, I believe -- it says curriculum committee, yes, she  
21 was there.

22 Q.       Do you recall anything that Sheila Harkins said?

23 A.       I believe it was at this meeting that, again, we  
24 explained how we teach Evolution. And my recollection  
25 is that at that meeting is when Sheila said after I

00084

1 explained how we teach Evolution that she said if  
2 everyone did it like Jen did, then there won't be a  
3 problem. This would be fine. I agree with everything  
4 Jen just said.

5 Q. And how about Casey Brown, was she there?

6 A. I believe so, yes.

7 Q. Do you recall anything she said?

8 A. Not -- no. Not that I can put my finger on.

9 Q. What about the idea of putting it in the text -- the  
10 text Of Pandas in the classroom as a reference? How did  
11 you and Bert Spahr as faculty respond to that?

12 A. Let's say that we didn't like the book necessarily in  
13 the classroom at all. But again, I think that we had  
14 said that we would be willing to compromise. If they  
15 wanted to get a couple for the classroom, not -- I am  
16 pretty sure that at that point, it was just what if we  
17 got five, two, three to five books per classroom. If  
18 kids wanted to look at it, they could take it home.

19 I don't think we were too keen on the idea of  
20 having it there. But if it was to be a compromise to  
21 having every student have it, then we would be willing  
22 to have a couple of copies if kids wanted to take it  
23 home.

24 Q. What was driving your objection, Jen, to them having it?  
25 What was your concern to the students having the book?

00085

- 1 A. Several things. It's not -- we teach to the standards.  
2 It is not in the standards. At that point, it wasn't in  
3 the curriculum.  
4 Again, we thought parts of that was too high of a  
5 reading level for our ninth graders. And some of the  
6 science, we didn't believe was sound.
- 7 Q. Okay. And anything else you took with you from that  
8 meeting, Jen? Did you have a sense that there was a  
9 resolution?
- 10 A. Again, yeah, that we felt that okay, if we were going to  
11 get these Of Pandas books, we would get several copies  
12 to be placed in the classroom as a reference and be  
13 done.
- 14 Q. Do you recall a discussion of Intelligent Design at that  
15 time?
- 16 A. Well, since the Of Pandas book goes over Intelligent  
17 Design, I would say yes.
- 18 Q. How about was there any discussion of curriculum change  
19 related to the use of Of Pandas?
- 20 A. No. I don't believe there was at that point.
- 21 Q. Did you see any future developments that would be  
22 resulting from the meeting when you left? Did you think  
23 there was going to be more deliberations on the part of  
24 the Board curriculum committee, or were you just kind of  
25 uncertain where things were?

00086

- 1 A. I think yeah, probably more uncertain or thinking again  
2 where is this going type thing.
- 3 Q. Okay. That would bring us into September. Let me ask  
4 you: Did you attend any Board meetings in September?
- 5 A. Yes.
- 6 Q. You did?
- 7 A. I have notes from a September 14th meeting. I can't be  
8 sure because I don't have the minutes attached, but it  
9 was some time I believe in September.
- 10 Q. And you are looking at the notes which are in Miller  
11 Exhibit 3 which have a notation in the upper right-hand  
12 corner My Notes from the Board Meeting In September I  
13 think?
- 14 A. Yes.
- 15 Q. Looking at that, Jen, why do you think it is from  
16 September?
- 17 A. Probably because of where it was maybe in my stack of  
18 stuff, that it was before October. So I was assuming  
19 that it was before the actual curriculum change  
20 implementation took place in October.
- 21 Q. There's some notations here. The first is one that is  
22 linked to Barrie Callahan?
- 23 A. Yes.
- 24 Q. And it indicates she is asking the question about what  
25 will happen with Of Pandas and People. Does that

00087

- 1 notation you made, does it trigger any recollection  
2 about what Barrie Callahan said at the meeting?
- 3 A. I think she was asking what are they going to do with Of  
4 Pandas and People. Where are they going to put it? Is  
5 it going to be a supplemental text? Are they going to  
6 put it in the classroom, that type of thing.
- 7 Q. Is Barrie Callahan speaking during the public comment  
8 portion of the meeting?
- 9 A. Yes.
- 10 Q. Do you recall if it was during the beginning of the  
11 meeting or during it?
- 12 A. I assume it was at the beginning, but I couldn't be  
13 sure.
- 14 Q. There is an comment there attributed to Larry Snook?
- 15 A. Yes.
- 16 Q. What is that comment getting at? What is that notation  
17 getting at?
- 18 A. He must have asked the question about Act 72, and then  
19 asked -- I think probably something like we're having  
20 discussions about Act 72, and so how can we then spend  
21 money on a second textbook? When it is foolish where we  
22 cut other monies from other places, why spend money on  
23 the second textbook Of Pandas and People?
- 24 Q. What is Act 72?
- 25 A. How do I explain that? Act 72 is the gambling, whether

00088

1 we take state money from gambling.

2 Q. Then there is a notation for Amanda Heilman?

3 A. I'm assuming just a community member. I wrote down her  
4 name. I don't really remember much. I am assuming she  
5 said something close to that.

6 Q. What I am trying to do, Jen, is just get a sense for  
7 these comments are being offered at the public portion  
8 of the meeting.

9 With Barrie Callahan, I can see she's still  
10 wondering what is going to happen to Of Pandas. Did  
11 these other people's comments follow on hers?

12 A. I believe so, yes. Yes.

13 Q. Do you recall any comments by Board members made in  
14 response to any of the comments reflected on this page?

15 A. No. I think at this time they had pretty much toned  
16 down their comments, or they were not speaking out as  
17 much as they had been in June of that year.

18 Q. This is the September Board meeting. We know Of Pandas  
19 is still at issue so to speak?

20 A. Yes.

21 Q. If you look at September, do you recall any meetings of  
22 the Board curriculum committee?

23 A. No. I would say not because we don't have them  
24 recorded. So I would say not.

25 Q. Do you recall any discussions with your colleagues about

00089

1 the issue of Of Pandas?  
2 A. Not anything in particular. I am sure we were  
3 discussing it, but I don't remember, you know. Have you  
4 heard anything, that kind of thing, what's going on with  
5 the books, but nothing in particular.  
6 Q. Let me ask you as a teacher now, the book that you  
7 recommended has been approved on August 2nd?  
8 A. Yes.  
9 Q. And there is this notion of bringing another book as a  
10 supplementary text?  
11 A. Yes.  
12 Q. You have got a Board curriculum committee meeting in  
13 August. Is there still -- and Mr. Buckingham was there.  
14 Is anyone still accusing him of wanting to teach  
15 Creationism; is that still a flash point, or are we  
16 focused on the use of the text? What is the state of  
17 affairs at that August 30th Board meeting?  
18 A. At the Board meeting?  
19 Q. Curriculum meeting, I'm sorry.  
20 A. Let me read her notes again. I think at this point,  
21 most of it was the book. I believe there was still some  
22 discussion of Intelligent Design versus Creationism  
23 because I think maybe at this Board meeting is where  
24 Mrs. Spahr brought again some of her court cases. And  
25 in one of them, it had something about Intelligent

00090

1 Design, you know, may you teach Intelligent Design in a  
2 biology classroom.

3 And she had -- I don't know - opinions or  
4 something of someone. I don't know where she printed it  
5 off the Internet, the research she had done.

6 There was still some discussion of not just the  
7 textbook, but Intelligent Design, is it the same as  
8 Creationism, is it different than Creationism, yes.

9 Q. If we turn our mind back to the August 30th Board  
10 curriculum committee meeting with Mr. Bonsell there and  
11 so on and focus on this equation or this linkage here  
12 that some people are making, do you recall Mr. Bonsell  
13 speaking to that linkage, whether Intelligent Design was  
14 Creationism or distinct, whether it was a scientific  
15 theory?

16 A. No, I can't remember anything in particular. Obviously,  
17 I did get a sense -- and I can't remember anything  
18 particular that he said, but I did get a sense that he  
19 did believe that Intelligent Design was separate from  
20 Creationism and could be presented in a biology  
21 classroom, and that's why the Of Pandas and People book  
22 was there.

23 Like I said, I can't remember any specific quotes,  
24 but that's the sense that I came away with.

25 Q. That he was viewing Intelligent Design as not

00091

1 Creationism --

2 A. Yes.

3 Q. -- and therefore appropriate?

4 A. Yes.

5 Q. How about Bill Buckingham, did he say anything at that  
6 meeting of August 30th about that?

7 A. I can't remember anything in particular, no. But it  
8 seemed that, you know, they were all pretty much in  
9 agreement I would say.

10 Casey Brown, I am assuming she was there, but she  
11 would have not been in agreement with adding Intelligent  
12 Design and the Pandas book.

13 But the other two seemed like they were in  
14 agreement with Mr. Bonsell.

15 Q. And your sense for Casey Brown's position, what are you  
16 relying on there, Jen?

17 A. Statements -- again, I can't remember any particular  
18 statement, but statements that were made at different  
19 meetings. Again, it sort of goes back to is this  
20 religion, and we should stay away from this, that type  
21 of thing. I guess looking at it the same way we were,  
22 is it a science, that kind of thing.

23 Q. Was it your sense that Casey Brown equated Creationism  
24 and Intelligent Design, or how did you see her position?

25 A. I would say that -- I don't know if she equated it, but

00092

- 1 she thought there was enough gray area there, that we  
2 should stay away from putting it in. There was enough  
3 gray area there that it could be construed as  
4 Creationism or whatever.
- 5 Q. And that is something that has occurred to me as we are  
6 talking. Bert Spahr, you think she showed up to this  
7 meeting with some legal opinions?
- 8 A. Yes.
- 9 Q. Was there a discussion of the potential liability?
- 10 A. Yes.
- 11 Q. Did Bert Spahr speak specifically to that?
- 12 A. Yes. I know she read part of her -- whatever she had  
13 printed off word for word. I remember her saying  
14 several times what part of the legal and  
15 unconstitutional - she used three words there -- don't  
16 you understand. So yes, there was some discussion of  
17 that, yes.
- 18 Q. And how about the Board members who were present at the  
19 meeting, did they respond to that?
- 20 A. I think some questions were asked, where are you getting  
21 your information, who are you getting your information  
22 from. The information we get is saying that you can  
23 present this. So there was sort of this back and forth.  
24 The information we are getting is saying we can't  
25 present this, and the information saying we can. So,

00093

- 1 yes.
- 2 Q. Do you remember anyone saying we are going to be sued?
- 3 A. No, not particularly. If anyone, it would have been
- 4 Casey Brown because that was her concern mostly. But I
- 5 couldn't say that she definitely said it at that
- 6 meeting.
- 7 Q. How about Bert Spahr, was she concerned again for the
- 8 untenured teachers?
- 9 A. Yes.
- 10 Q. Did she bring that to the attention of the Board
- 11 members?
- 12 A. Yes.
- 13 Q. Do you recall any response by Board members?
- 14 A. No.
- 15 Q. If you would, Jen, I would ask you to look at Exhibit 5.
- 16 About a quarter of the way through the packet, there is
- 17 an e-mail from Stephen Russell dated August 26th?
- 18 A. Yes I will find it. There it is, yes.
- 19 Q. Would you take a quick look at that?
- 20 A. (Witness complies.)
- 21 Q. There is a notation in the upper right-hand corner. Is
- 22 that your handwriting?
- 23 A. Yes.
- 24 Q. This is the same meeting, right, the August 30th, 2004
- 25 meeting?

00094

- 1 A. Yes.
- 2 Q. There are notations it looks like in another hand below  
3 yours on the first page of that e-mail?
- 4 A. Yes.
- 5 Q. Whose handwriting is that?
- 6 A. That would be Rob Eshbach's.
- 7 Q. And I see there some comments which seem to reflect the  
8 criticisms you had advanced of the text of Of Pandas  
9 earlier; is that accurate?
- 10 A. In the middle here?
- 11 Q. Yes.
- 12 A. Yes. I am assuming that is what he had there about the  
13 grade level, yes.
- 14 Q. And a comment at the bottom attributed to  
15 Mr. Buckingham, each student be given this book with  
16 textbook, that was his stated position before he left  
17 that meeting; correct?
- 18 A. Yes.
- 19 Q. Looking at this, does it make you think there was some  
20 discussion just along the lines you suggested of we  
21 don't think we will be sued?
- 22 A. Yes, yes. And as I recall, this was handed out to show  
23 Steve Russell, who would have been the District  
24 Solicitor, their opinion on this issue.
- 25 Q. And looking at September again, do you recall anything

00095

- 1 else that happened in September that touched on these  
2 two issues? Now it is the Of Pandas text and the  
3 curriculum change.
- 4 A. No, I can't pinpoint anything.
- 5 Q. When Of Pandas was discussed at the August 30th meeting,  
6 did you have any discussion relating to what would be  
7 presented in the classroom?
- 8 A. Wow! I am sure we did. I am trying to think. At that  
9 point, I don't think that that was discussed too much.  
10 Just maybe at that point that we mentioned that there is  
11 this book, again, if the students want to use it, they  
12 can, or have it available to them in the classroom, that  
13 type of thing. I don't remember much other than that.
- 14 Q. Let me be more specific. It seems like at the  
15 August 30th meeting from what you told me the issue is  
16 in what way the text Of Pandas is going to be in the  
17 classroom. It has been donated.  
18 Is it going to be as a reference text, or is each  
19 student going to get it; is that correct?
- 20 A. At that point, it wasn't donated I don't think. At that  
21 point, I don't think we knew how we were getting the  
22 textbooks. It was before it was donated.
- 23 Q. Fair enough. But am I correct that those were the  
24 options that were being discussed?
- 25 A. Right. Whether every student gets a copy to be handed

00096

- 1 out with the textbook, or whether there is several in  
2 the classroom or a whole classroom set, that kind of  
3 thing.
- 4 Q. I think you said that you thought if it was in the class  
5 as a reference text, that was more acceptable to you?
- 6 A. Right. More acceptable than handing it out to every  
7 student, yes.
- 8 Q. Did you think that this was going to change your  
9 classroom instruction?
- 10 A. At that point, other than having to mention this book,  
11 no. I mean mentioning the book would have been  
12 different than what I had done in the past.
- 13 Q. But in terms of your presentation of Evolutionary  
14 Theory, did you see any impact being discussed?
- 15 A. No. At that point, I did not think it would be any  
16 different.
- 17 Q. So from -- and nothing else in September, right?
- 18 A. Not that I can remember.
- 19 Q. So we move into October. And there's a note on Exhibit  
20 4, the page with two circled in the upper right-hand  
21 corner, that references October 8, 2004.
- 22 A. Yes.
- 23 Q. Take a look at that notation.
- 24 A. (Witness complies.)
- 25 Q. Do you have a recollection of a meeting on October 8th?

00097

- 1 A. Yes.
- 2 Q. Do you have a recollection apart from that notation? In  
3 other words, are you relying on the notation for what  
4 you remember, or do you remember the meeting as you sit  
5 here today?
- 6 A. I would have to look back and see if -- I don't remember  
7 if October 8th was an inservice meeting or what it was,  
8 but I remember Mr. Baksa coming to us and handing to us  
9 the curriculum change that the Board curriculum  
10 committee wanted to implement.
- 11 Q. Do you have a copy of that? Let me ask you: Was it one  
12 of the three versions?
- 13 A. Yes, it would be probably in the Board packet. It is in  
14 the Board packets.
- 15 Q. Which is Exhibit 3?
- 16 A. The Board minutes.
- 17 Q. Minutes for October 18th, 2004?
- 18 A. Yes, October 18th. It is the one that says I believe  
19 draft on it.
- 20 Q. Before I content myself with that reference, I just want  
21 to make sure there is not another document in there that  
22 says draft. In different packets, there is an abundance  
23 of drafts.
- 24 If you look at the front page of the minutes for  
25 October 18th, 2004 contained in Miller 3, you will see a

00098

- 1 reference to an October 4th, 2004 School Board meeting?  
2 A. October 4th?  
3 Q. Yes. At the top there, they generally approve the  
4 minutes. All I want to know, Jen, is if you went to  
5 that October 4, 2004 meeting?  
6 A. Let me look and see if something brings -- it is looking  
7 familiar. I would say there is a good possibility that  
8 I went, yes. Yeah. I am pretty sure that I went to  
9 this meeting.  
10 Q. Do you recall any discussion of the biology curriculum  
11 at the October 4, 2004 Board meeting?  
12 A. No, I believe that that was the meeting that it was just  
13 put in the curriculum that it was just like a FYI, that  
14 the Superintendent was approving the donation of two  
15 classroom sets of Of Pandas and People.  
16 Q. Okay. Now so that brings us to this October 8th meeting  
17 in which you recall a draft being presented to you?  
18 A. Well, the draft was not presented to us at the 18th  
19 Board meeting. It was before that.  
20 Q. You are right. I am referring to the October 8th  
21 meeting.  
22 A. Okay. Not a Board meeting, but a --  
23 Q. Right.  
24 A. Right.  
25 Q. And it was during that meeting, if I understand you

00099

- 1 correctly, that the document labeled draft was presented  
2 to you; correct?
- 3 A. Yes.
- 4 Q. And that document has the notation in the upper  
5 right-hand corner that says spray adhesive for future  
6 reference?
- 7 A. Yes.
- 8 Q. Tell me, Jen, what was your reaction to seeing the  
9 draft?
- 10 A. We were very upset at seeing that.
- 11 Q. And why?
- 12 A. Again as I said, it seemed like when we came out of a  
13 lot of these meetings, that things had been settled.  
14 Again at that August 30th meeting, we were in agreement  
15 that okay, if we needed to the reference of Of Pandas  
16 and People would be in the classroom, but again we  
17 didn't want Intelligent Design. We were uncomfortable  
18 having to teach it or, you know, having to present it.  
19 And then we get this that says that they will be made  
20 aware of Intelligent Design.
- 21 Q. Okay. Who was at the October 8th meeting?
- 22 A. I believe that one was just in my room. I think Baksa  
23 came over or Bertha was there. At that point, I believe  
24 -- although I can't be sure -- Rob Eshbach I think was  
25 definitely there and possibly Leslie Prall and Bob

00100

1 Linker since they were biology teachers also.  
2 Q. Do you recall if Mike called you up and said I am coming  
3 over with a proposed curriculum change?  
4 A. I believe, yes.  
5 Q. Do you recall anything else Mike Baksa said to you?  
6 A. No.  
7 Q. You indicated that you felt somewhat surprised by this?  
8 A. Yes.  
9 Q. How about Bert Spahr, what was her reaction?  
10 A. Surprised, angry.  
11 Q. If you look at the page where we are referring to with  
12 the draft stamped across the middle in the right hand  
13 lower corner, there is a reference Of Pandas and People?  
14 A. Yes.  
15 Q. Then there is some little handwritten hash mark there.  
16 Did that portion of it surprise you?  
17 A. Yes. We were upset with that portion also because we  
18 don't list any other reference textbooks in our  
19 curriculum. If you look through the biology curriculum,  
20 nowhere is there listed a reference text. And we all  
21 have reference texts that we have in our classrooms,  
22 other biology books that students can use.  
23 I have a science encyclopedia in our classroom. I  
24 don't list that necessarily because that could be --  
25 students could use it at any time. We were upset that

00101

1 that one was singled out.

2 Q. And why? What was it about the singling out that you  
3 saw as inappropriate?

4 A. Again at that point, we were unsure putting these words  
5 and putting this in our actual curriculum, now we are  
6 asking the question okay, do we have to teach this, do  
7 we have to specifically teach from the text, that kind  
8 of thing.

9 By putting it in there as part of our curriculum,  
10 those are the kinds of questions that came up that we  
11 were very uncomfortable with teaching Intelligent  
12 Design, teaching from the textbook, and that kind of  
13 thing.

14 Q. Did you have any discussion at this October 8th meeting  
15 about whether you would be required to teach Intelligent  
16 Design?

17 A. I think so. I remember at some point asking for  
18 specific direction, what are we to say, what are we to  
19 do in regards to this.

20 Q. And in regards to this, do you mean the curriculum  
21 change which says students will be made aware of  
22 gaps/problems in Darwin's Theory and of other theories  
23 of Evolution including, but not limited, to Intelligent  
24 Design?

25 A. Yes.

00102

- 1 Q. There is a reference there to gaps/problems in Darwin's  
2 Theory. Did that surprise you?
- 3 A. No, because that is what we had agreed to in June I  
4 guess it was, that we would be willing to point out up  
5 to that point.
- 6 Q. How about the reference to other Theories of Evolution;  
7 had that been discussed?
- 8 A. I believe that we did discuss that because in our  
9 textbook, it does talk about things that led up to  
10 Darwin's -- his theory of natural selection; that there  
11 are -- Lemarck is in there and some other scientists  
12 that sort of influenced Darwin. That we felt was okay  
13 because those were what led up to the formulation of his  
14 theories.
- 15 Q. So you indicated that you had some questions. How about  
16 Bert Spahr, did she have questions?
- 17 A. Yes.
- 18 Q. Do you recall what she said?
- 19 A. I have to get my timeline straight. I don't think that  
20 it was in -- I don't think it was in this meeting yet.  
21 This I believe was just a quick meeting with just Mr.  
22 Baksa. He handed this to us, asked us what we thought.  
23 We said at that point, we don't want those words  
24 Intelligent Design in our curriculum. We are okay up to  
25 of other Theories of Evolution, period. And I remember

00103

1 him taking that back to the curriculum committee I am  
2 assuming at that point, that we wanted the reference of  
3 Of Pandas and People off and we wanted the words  
4 including, but not limited to, Intelligent Design out of  
5 the curriculum.

6 Q. How about Rob Eshbach, do you recall him saying  
7 anything?

8 A. I don't remember anything in particular, no.

9 Q. You indicated you had some concern about are we going to  
10 be required to teach this. Did Mike Baksa address that  
11 concern during this October 8th meeting?

12 A. To me at that point, I am remembering that it was still  
13 up in the air. Because I remember that I asked that  
14 question at the October 18th Board meeting of the Board.  
15 So to me, I would think that it was all up in the air at  
16 this point.

17 I don't know if we were unsure or he was unsure  
18 exactly at this point what this meant, where they were  
19 going to go with this.

20 Q. All right. If you look at the page of Miller 4 that has  
21 two circled there in the upper right-hand corner,  
22 there's two asterisks after the entry for October 8th  
23 that say it looks like we have amended the curriculum to  
24 remove ID from it, it is rejected by the committee.

25 Does that prompt any recollection on your part as

00104

1 to what happened after you made your suggestions about  
2 the draft?

3 A. Again, we told Mr. Baksa we wanted that out. And then I  
4 am assuming that she put that in there -- it was  
5 rejected by the committee simply because when we saw the  
6 minutes for the October 18th meeting, it was included.  
7 I mean that was one of the versions that was included.

8 So you know, I am not exactly sure. I don't  
9 remember them coming back saying it was definitely  
10 rejected by the committee or anything like that.  
11 Nothing in particular.

12 Q. That is what I was asking. You say she, is that Bert  
13 Spahr?

14 A. Yes.

15 Q. She created this document?

16 A. Yes.

17 Q. There is a note in there that refers to October 12th  
18 through 15th?

19 A. Yes.

20 Q. So we have got a period here between an October meeting  
21 where the teachers have said we want Intelligent Design  
22 out, and then we know the Board meeting is on  
23 October 18th.

24 If we focus on that period, do you recall further  
25 discussions with the administration relating to the

00105

1 proposed curriculum change?

2 A. Yes. I don't remember if it was -- I think it was in  
3 this time that -- I know it was before the October 18th  
4 Board meeting that Dr. Nilsen actually came to see me in  
5 my room.

6 And this is when -- I believe it was he that told  
7 me that Mr. Bonsell wanted to add the note at the bottom  
8 origins of life will not be taught. I remember the  
9 discussion that -- I remember him thinking that this  
10 would then satisfy us, that if they put that note at the  
11 bottom, that this is a good thing to put this at the  
12 bottom.

13 So I don't know. It caused a little bit of  
14 tension between -- with Mrs. Spahr because he came to  
15 see me instead of going to her as Department head. I  
16 remember she walked in when he was speaking to me about  
17 it.

18 He wanted to know what was our concerns, again  
19 state to him why we didn't like Intelligent Design in  
20 there, why we didn't want Of Pandas and People in there.  
21 I am positive that was before the October 18th Board  
22 meeting.

23 Q. Do you recall what you told Dr. Nilsen?

24 A. Same things. We were concerned do we have to teach  
25 this. And I explained about the reference texts, that

00106

1 we don't list any others.

2 He explained to me that if students are going to  
3 take it home, that it had to be listed as a reference.  
4 So that if a parent said why does my student have this,  
5 if it is in the curriculum, then we're covered if it is  
6 there. So that was his explanation to me. I remember  
7 that explanation.

8 I remember him coming to me, which I thought was  
9 odd, him sitting down with me and the first thing he  
10 said was Jen, we just want to let you know, Mr. Bonsell  
11 and I have been talking, and we think you would make a  
12 great Department head. That is how he started his  
13 conversation.

14 Q. Do you recall him responding to your concern about  
15 whether you would have to teach Intelligent Design?

16 A. Nothing directly. I can't be sure, but he may have said  
17 something like well, that we'll deal with, or we are  
18 going to work on that, or something to that effect.  
19 Nothing in great particular at that point.

20 Q. Did you in this period between August 30th and the  
21 October 18th, 2004 Board meeting, did you have any  
22 discussion with your colleagues about the language of  
23 this curriculum entry students will be made aware of?

24 A. Yes. Basically, we wanted to know what that meant. Did  
25 that mean -- mentioning it, did that mean making them

00107

1 aware of what the theory is? How in detail does it mean  
2 make aware of?

3 We thought that was very vague. We weren't sure  
4 what that entailed. At that point, we were still  
5 questioning what that meant.

6 Q. And if I am understanding you correctly when you get to  
7 do we have to teach it, it is because you don't want to  
8 have to teach it; is that right, Jen?

9 A. Exactly.

10 Q. And that's for the reasons you stated earlier?

11 A. Yes.

12 Q. Just generally, what were they, again?

13 A. Again as a -- I guess you can say as a Science  
14 Department or me in particular, I don't think that  
15 Intelligent Design is -- I don't think it falls under  
16 the parameter of science. Science is testable. I don't  
17 think that you can create a test for an intelligent  
18 designer.

19 If there was proof that there was an intelligent  
20 designer or a God out there, there wouldn't be any  
21 atheists because there would be proof. I don't think  
22 that you can design a test, which is what science is,  
23 that is going to prove that there is definitely an  
24 intelligent designer there. Therefore, it doesn't fall  
25 under the realm of science.

00108

1 Q. Anything else that you are --

2 A. Again, we were worried about is this -- we didn't  
3 necessarily -- I think I have this in some of my quotes  
4 in the newspapers or articles that we didn't want to be  
5 the test case if we were the first School District to  
6 approve this.

7       Again, worried about lawsuits. Does this fall  
8 under -- it has never been tested whether Intelligent  
9 Design is Creationism or not. We felt uncomfortable  
10 being the test case and having to determine I guess  
11 whether or not -- have someone determine for us whether  
12 or not it fell -- if it was lawful or unlawful and that  
13 kind of thing.

14       We were worried about the whole separation of  
15 church and state, is it Creationism, that type of thing  
16 also along with it not being science.

17 Q. In these discussions with the administration, are you  
18 bringing that to their attention?

19 A. Yes.

20 Q. And are you concerned for your personal liability, or is  
21 it just for the District?

22 A. I think there is a degree of personal liability there.  
23 I have said this a lot. We felt that we were stuck in  
24 the middle.

25       We had a group that was sort of dictating to us

00109

- 1 what we had to do, but we were the ones that had to do  
2 it in the classroom. We did feel liable. I think we  
3 said that in several meetings.  
4 We were worried that someone could sue us for  
5 saying certain things in the classroom.  
6 Q. Did the administration ever respond to those concerns?  
7 A. Not until probably November. Not at this time.  
8 Q. All right. What is next, the October 18th Board  
9 meeting?  
10 A. Yes.  
11 Q. Did you go?  
12 A. Yes.  
13 Q. Did you go because of the biology curriculum issue?  
14 A. Absolutely.  
15 Q. When you went, did you have the document we have been  
16 referring to as draft with you?  
17 A. I believe so, yes.  
18 Q. Did you have other versions?  
19 A. I don't think I took any with me. I think they were  
20 given to us possibly even at the meeting. I was sitting  
21 beside Mrs. Spahr. So probably given to her perhaps the  
22 version A, B and C.  
23 Q. Do you think it would help if you had those in front of  
24 you?  
25 A. Are they here?

00110

- 1 Q. I don't think so. Let me see.  
2 A. There's two of them here. It says C.  
3 (J. Miller Deposition Exhibit 7 was marked.  
4 BY MR. GILLEN:  
5 Q. Jen, I am giving you documents we have marked as Miller  
6 7.  
7 A. Yes.  
8 Q. Would you take a look through that, please, noting that  
9 some are two-sided copies and some are not?  
10 A. (Witness complies. Okay.  
11 Q. Do those look familiar to you?  
12 A. Yes.  
13 Q. With that in mind, do you have notes that relate to the  
14 October 18th Board meeting?  
15 A. October 18th?  
16 Q. Yes.  
17 A. I believe I do. Maybe, I don't. I don't believe that I  
18 do.  
19 Q. I think you are right. All right.  
20 A. I think Mrs. Spahr had notes from that meeting, but I  
21 don't believe that I have any.  
22 Q. Tell me what you remember, Jen, about that October 13th  
23 Board meeting.  
24 A. It is the 18th.  
25 Q. 18th, I am sorry.

00111

- 1 A. There was public comment at the beginning. I know that  
2 Mrs. Spahr stood up and prepared a statement that she  
3 read to the Board.  
4 I believe that at that time would have been one of  
5 our Co-Presidents of our Association made a statement to  
6 the Board.
- 7 Q. Let's start with Mrs. Spahr. Do you remember the thrust  
8 of her comments to the Board?
- 9 A. She -- basically that we wanted no parts of Intelligent  
10 Design. I remember her quoting court cases that had to  
11 do with Intelligent Design/Creationism type thing. I  
12 guess Creationism more so.  
13 And I remember she definitely quoted court cases  
14 because I remember Mr. Buckingham making the comment  
15 where did you get your law degree after she was doing  
16 that. That is why I remember her quoting those.
- 17 Q. All right. Any other Board members react to Bert  
18 Spahr's comments?
- 19 A. That is the one I remember. I don't remember others,  
20 no.
- 21 Q. You indicated that someone else spoke, a Union rep?
- 22 A. I believe Jere Wynegar spoke. That was the meeting that  
23 he spoke at. He at that time was Co-President of the  
24 Association.
- 25 Q. Co-President with who?

00112

- 1 A. Sandi Bowser. He is no longer Co-President, but he was  
2 at that time.
- 3 Q. Do you recall the thrust of his comments?
- 4 A. Same type of comments about not including Intelligent  
5 Design. I think there was something about -- I can't  
6 remember. Something about being -- I don't know if it  
7 was being represented, or they are being backed by --  
8 these were comments that were from Dover and the Union  
9 as a whole, maybe PSEA and that type of thing. That we  
10 were backed by those types of organizations. But  
11 nothing in more detail than that.
- 12 Q. When Mrs. Spahr and Mr. Wynegar spoke, do you recall any  
13 of them bringing up whether or not the teachers were  
14 going to be required to teach it?
- 15 A. I don't recall. I believe Mrs. Spahr handed you a copy  
16 of her -- of the speech she gave. I am sure you can  
17 look, but I don't recall it in particular now.
- 18 Q. How about Creationism, was Bert Spahr equating  
19 Intelligent Design with Creationism?
- 20 A. I believe yes because she was quoting again cases, and  
21 there has been no cases on Intelligent Design. I am  
22 only assuming she was using the Court cases on  
23 Creationism.
- 24 Q. Let's just run through the Board. I know you remember  
25 Mr. Buckingham responding to her. How about Alan

00113

- 1           Bonsell?
- 2   A.       I don't remember, no.
- 3   Q.       Sheila Harkins?
- 4   A.       No, I don't remember anything.
- 5   Q.       Noel Wenrich?
- 6   A.       No.
- 7   Q.       Jane Cleaver?
- 8   A.       No.
- 9   Q.       Angie Yingling?
- 10  A.       No.
- 11  Q.       All right. Two speakers. Any other public comment?
- 12           Did you speak at that meeting, Jen?
- 13  A.       I didn't stand up and have a prepared statement, but
- 14           when questions were asked -- I remember jumping up to
- 15           the podium at one point because of something Heather
- 16           Geesey said later in the meeting. I remember being
- 17           asked a question by Mrs. Harkins.
- 18           So I didn't prepare anything, but I was responding
- 19           to things that were said.
- 20  Q.       What did Heather Geesey say that required an
- 21           explanation?
- 22  A.       Let me see if I got this right. Heather Geesey said
- 23           something about -- something was said -- I think it was
- 24           from the Browns. I am assuming something was being said
- 25           about a lawsuit and the possibility if we pass this, or

00114

1 now that this is passed or something -- I don't know if  
2 it was before or after it was passed.

3 Something was said about a lawsuit and that we  
4 could be sued. And she said -- it was our understanding  
5 she was referring to the teachers -- if they sue us,  
6 then they should be fired because they agreed with this.

7 And that caused me to jump up out of my seat and  
8 go to the podium and tell them that we did not agree  
9 with this, the change to the curriculum.

10 Q. Okay. When you say this, what are you getting at at  
11 that point in time?

12 A. The curriculum change, the adding of the words  
13 Intelligent Design to the curriculum.

14 Q. I just want to make sure I don't neglect this. Jen, in  
15 Miller 3, there's some notes that have October 18th in  
16 the left-hand -- upper left-hand corner.

17 Is that your handwriting or Bert Spahr's.

18 A. That is Bertha's.

19 Q. Later on in the same pack, there's some notes like this,  
20 Jen?

21 A. Yes. That was I believe my notes at the November 1st  
22 meeting because that was right after November 1st.

23 Q. Thank you very much. I just wanted to make sure. Back  
24 to the October 18th meeting. If you would, look at  
25 Miller 7.

00115

- 1 A. (Witness complies.) Yes.
- 2 Q. Just look at and compare the enclosures marked XI-A,  
3 XI-B and XI-C.
- 4 A. Yes.
- 5 Q. If you look at the portion of Exhibit 7 that has the  
6 Bates stamp number 17 in the lower right-hand corner --
- 7 A. Yes.
- 8 Q. -- you will see that the cover letter describes the  
9 following document as the recommended changes to the  
10 biology curriculum from the Board curriculum committee.
- 11 A. Yes.
- 12 Q. Would you take a look at that?
- 13 A. Yes.
- 14 Q. Now if we look under the column Units  
15 Content/Concepts/Process, at the foot of that page you  
16 will see what I believe are text identical to that in  
17 the draft we discussed earlier?
- 18 A. Yes.
- 19 Q. Now if we go to the next page, which is Bates stamped --  
20 if you go to the page Bates stamped 19 referencing  
21 enclosure XI-B, you will see the cover letter describes  
22 it as the recommended changes to the biology curriculum  
23 for the administration and staff?
- 24 A. Yes.
- 25 Q. And then the following document which is Bates stamped

00116

- 1 page 20 or has Bates stamp number 20, what is that, Jen?
- 2 A. That is what we had agreed to as a change to our  
3 curriculum. We would be willing to point out that there  
4 are gaps in some parts of Darwin's Theory and of other  
5 Theories of Evolution, period.
- 6 Q. I note that the reference under the column headed  
7 Materials and Resources, the reference to Of Pandas is  
8 out?
- 9 A. Yes.
- 10 Q. If we turn to the next page of Exhibit 7 which has the  
11 Bates stamp number 21 in the lower right-hand corner and  
12 references XI-C, you see there is attached is a second  
13 draft to the recommended changes to the biology  
14 curriculum of the administration and staff.
- 15 A. Well, this is the first time I have seen this. This  
16 upsets me because that was not the recommendation from  
17 the staff because it has the words Intelligent Design  
18 it. Oh, no, it does not. Okay. Never mind.
- 19 Q. That's right, Jen. That is what I was going to ask you  
20 about. I think you have answered my question, but is  
21 this the first time you have seen it, or looking at it  
22 now --
- 23 A. This is the first time I have seen the memorandums that  
24 were attached. We had gotten these at the Board  
25 meeting, but I don't believe we had the memorandums that

00117

- 1 were attached.
- 2 Q. By these, you mean the referenced enclosures; in other  
3 words, the cover memos?
- 4 A. The cover memos, yes.
- 5 Q. They reference the enclosure. You hadn't seen the cover  
6 memos?
- 7 A. Yes.
- 8 Q. But you had seen the enclosures?
- 9 A. Yes.
- 10 Q. With that in mind, I would like you to look at this  
11 enclosure which is XI-C and tell me what you notice is  
12 different.
- 13 A. There is a note at the bottom that says origins of life  
14 is not taught. And the reference to Of Pandas and  
15 People is still -- is there.
- 16 Q. And if I am not mistaken, the entry under UNIT  
17 Content/Concepts has been changed slightly to read  
18 students will be made aware of gaps and problems in  
19 Darwin's Theory and of other Theories of Evolution.  
20 So on the one hand, problems has been taken from  
21 the Board curriculum committee's version; is that  
22 correct, Jen?
- 23 A. It looks like it, yes.
- 24 Q. On the other hand, the reference to Intelligent Design  
25 has been omitted?

00118

1 A. Yes.

2 Q. Now with that in mind, when you went to the  
3 October 18th, 2004 Board meeting, does XI-C, this last  
4 document we are looking at, seem to reflect what you  
5 thought the administration and staff was going into the  
6 meeting with?

7 A. My recollection is that -- and I believe that Dr. Nilsen  
8 even came over to us at one point during the meeting and  
9 said which version do you want, and we said we want B.

10 Q. That's why I am asking you because the cover letter  
11 describes it as a set of recommended changes from  
12 administration and staff.

13 A. Right. Like I said, that is the first time I had seen  
14 that. I was not aware that that included staff on  
15 there.

16 Q. Well, do you have any recollection of discussions with  
17 Mr. Baksa between October 8th and October 18th  
18 addressing these points of conflict that are being  
19 reflected in the changes to the various enclosures?

20 A. The only thing that I can remember, like I said, is when  
21 Dr. Nilsen came to me and said Mr. Bonsell wanted to add  
22 the origins of life is not taught at the bottom. Dr.  
23 Nilsen was saying he thought that was a good idea, that  
24 that would sort of alleviate some of our fears.

25 I think I said to him at that point I am not sure

00119

1 if it does; that he could put that in there because we  
2 had explained to them several times we didn't teach  
3 origins of life. It didn't matter if it was there or  
4 not.

5 And again, my recollection is that Dr. Nilsen had  
6 said that if we are handing out these books -- if  
7 students are taking them home, then the reference had to  
8 be there.

9 I don't know. I can't remember any other specific  
10 conversations other than that.

11 Q. How about if we focus on the note and look at your  
12 discussions throughout. I mean if I am understanding  
13 you correctly, you have said it was always your point  
14 that origins is not taught?

15 A. Right.

16 Q. If I am not mistaken, Bert Spahr had the same position?

17 A. Yes, yes.

18 Q. Do you have a definite recollection of that not being  
19 discussed as a possible addition on the part of  
20 teachers?

21 A. I think at that point, we probably said, you know, if it  
22 has to be there, fine. Again, we don't teach origins of  
23 life, anyway. If it is on there, it is not a big deal  
24 because it is what we already do.

25 Q. Remember anything else? You said Heather Geesey made a

00120

1 comment.

2 How about Sheila Harkins, did she ask you a  
3 question?

4 A. Yes. I think that I recall her asking me at the Board  
5 meeting something about -- because if I remember  
6 correctly, the part that was eventually voted upon or  
7 that they were looking at was part A with the addition  
8 of the note origins of life will not be taught. That  
9 was added from Part C to Part A. That was the final  
10 thing that was approved.

11 I think I remember her asking me something about  
12 that origins of life, will that inhibit you from talking  
13 about anything in the classroom? I believe that was her  
14 question to me at that Board meeting.

15 Q. What was your response?

16 A. I think -- if I remember correctly, I think that I said  
17 that even though we don't teach it, with it being there,  
18 it made me a little more uncomfortable with questions  
19 that may come up in the classroom.

20 Are we allowed to discuss that? If there is a  
21 question, can we discuss that type of thing if that is  
22 in the curriculum? So she was asking about that, does  
23 it inhibit sort of discussion in the classroom.

24 Q. Do you recall any other Board members addressing the  
25 note or its purpose?

00121

- 1 A. Not that I can recall, no.
- 2 Q. Do you recall any of the Board members addressing or  
3 explaining the term origins of life as it is used in the  
4 note?
- 5 A. I don't -- no, no, I don't remember that.
- 6 Q. All right. As we sit here and think about this meeting,  
7 Jen, and we are focused on the biology curriculum change  
8 at this point, anything else stick out about the  
9 meeting? For one thing, it seems like it was  
10 contentious?
- 11 A. Yes. There were several times when Noel Wenrich had  
12 tried to change -- several times he had tried to change  
13 wording or language. I don't remember. It was so  
14 confusing.
- 15 They voted. I don't know how many times where  
16 they would vote like is it okay to change it, and then  
17 they would go through another round and say are we going  
18 to accept that change. There were so many rounds of  
19 voting that I sort of lost track of what they were  
20 voting on sometimes.
- 21 I remember they took a break at one point. I  
22 think it did get contentious there between  
23 Mr. Buckingham and Mr. Wenrich at some points because he  
24 was trying to do this.
- 25 Q. And by this, you mean the Parliamentary maneuvers of

00122

- 1 Mr. Wenrich?
- 2 A. Yes. He was trying to get -- he was trying to get the  
3 language sort of -- he was trying to take Intelligent  
4 Design is what he had done several times to this.
- 5 Q. And that is Mr. Wenrich?
- 6 A. Yes. He was trying to do that. I remember at a break  
7 at some point, we were confused. I was sitting at a  
8 table with Mrs. Spahr and Dr. Nilsen came over and said  
9 which version do you want? And we said we want B. And  
10 he said whatever happens, don't clap. And we had no  
11 idea what that meant because we didn't get what we  
12 wanted so we had no reason to clap. So I don't know  
13 what that meant at that point.
- 14 Q. Let's focus on the Board members. Do you remember Jane  
15 Cleaver saying anything?
- 16 A. No. At some point, she wasn't around a whole lot. I  
17 don't even remember if she was at the meeting or not. I  
18 am sure they keep track of who is in attendance, but I  
19 don't remember.
- 20 Q. Sure. And Mr. Wenrich, do you recall anything that he  
21 said during this portion of the Board meeting?
- 22 A. Like I said, he was trying to get the wording changed.  
23 I don't remember anything in particular, no, that I  
24 could --
- 25 Q. How about Sheila Harkins, apart from the question that

00123

1 she asked you, do you recall anything else she said?

2 A. No.

3 Q. Angie Yingling?

4 A. The only thing I remember about Angie Yingling was that  
5 she was sort of our swing vote when they were actually  
6 voting on this A. She had passed on her vote, and it  
7 was a four-four tie, and they went to her. And she  
8 hesitated and hesitated and then finally voted it in.

9 I don't remember anything particular that she said  
10 other than that action.

11 Q. Okay. Focusing again on the existence of this XI-C, do  
12 you recall Bert Spahr making any comment about that  
13 enclosure?

14 A. No. I don't know if it was part of what she spoke at  
15 the beginning of the meeting or not. Because I  
16 believe -- I don't think she did because at that meeting  
17 I believe that we had gotten these three different  
18 versions at that meeting. I don't think she would have  
19 had time to prepare anything about any of these.

20 Q. I guess that is what I am asking, Jen. From the way you  
21 seem to be recalling it now, you would be only expecting  
22 two versions. But you show up, and you get three.

23 And the third, XI-C, is entitled Recommendation  
24 from the Administration and Staff. Some parts, you can  
25 see how they got there, but you don't have a distinct

00124

- 1 recollection of formulating a separate version it seems?
- 2 A. Right. I don't remember that.
- 3 Q. Let me ask you that. Although you don't have a  
4 recollection of formulating a third version, it seems  
5 your discussions with Mike Baksa were about the  
6 additions that are reflected in XI-C?
- 7 A. Right. And like I said, there were so many versions  
8 going back and forth, is this okay, that kind of thing,  
9 so like I said, the two at the beginning I definitely  
10 remember. The third one is sort of you know -- I  
11 remember having like you said discussions about them,  
12 but I don't remember if he sat down and officially said  
13 this is okay, or if we have to, this is okay. I don't  
14 remember in particular.
- 15 Q. Let me ask you this: Do you remember sort of your views  
16 being solicited on those issues, the note and use of Of  
17 Pandas as a reference?
- 18 A. Like I said, I know Nilsen came to talk to me about  
19 those, and we discussed those two things, yes.
- 20 Q. How about reaction by any of your other colleagues to  
21 the various versions that were being voted upon at the  
22 October 18th, 2004 meeting; Bob Eshbach, did he say  
23 anything?
- 24 A. At the meeting?
- 25 Q. Yes, at the meeting.

00125

- 1 A. I don't believe so. He was the one though when Heather  
2 Geesey made her statement, we both jumped up and went to  
3 the podium. I ended up speaking. I don't remember him  
4 speaking.
- 5 Q. Bob Linker?
- 6 A. No.
- 7 Q. Anything else stick out about the meeting? Was the term  
8 Creationism used at that meeting?
- 9 A. I don't remember in particular unless it was during like  
10 I said Bertha's speech.
- 11 Q. All right. When the voting was over, the smoke cleared.  
12 What did you have a sense was the result?
- 13 A. We were disgusted, I guess you want to say, because up  
14 to this point, we felt that we were being cooperative  
15 and trying to compromise with these additions, and it  
16 seemed like they didn't listen to our input. They went  
17 ahead with what they wanted anyway.
- 18 So we felt sort of let down at that point, that  
19 all of this work was for nothing because they voted in  
20 what they wanted anyway.
- 21 Q. And at this point, Jen, when you say you were  
22 cooperative, you are referencing what issue  
23 specifically, the inclusion of Intelligent Design?
- 24 A. No. That we were willing to point out the gaps. That  
25 we were willing to have Of Pandas and People only as a

00126

1 reference text in our classrooms. That those kind of  
2 issues that we thought had been satisfied, had been  
3 solved, and then we made clear that we wanted no parts  
4 of Intelligent Design, and they put it in the curriculum  
5 anyway.

6 Q. So in the aftermath of this meeting, did you have any  
7 discussion with any of the Board members?

8 A. I know that Casey Brown -- this the meeting that she and  
9 her husband both resigned. I remember her crying at the  
10 end and giving me a hug.

11 But other than that, I remember her saying --  
12 telling me that she tried or we tried. And other than  
13 that, no.

14 Q. And how about with your colleagues? As you left the  
15 meeting, did you have any discussion?

16 A. I'm sure -- I think we were just sort of shell shocked  
17 at that point. Not only did this happen, then there  
18 were these resignations. There was a lot going on at  
19 that meeting. I can't remember any particular  
20 discussions other than just sort of shock.

21 Q. Go back to the meeting for a minute. Do you recall Dr.  
22 Nilsen speaking?

23 A. I remember I believe it was before this meeting, there  
24 was a conversation with -- I think it was Mr. Baksa that  
25 -- and maybe Dr. Nilsen was there, too. We felt that

00127

1 someone needed to stand up from administration and tell  
2 the Board their position. Someone -- a Superintendent  
3 should stand up and state, you know, I think this is  
4 okay. I don't think this is okay, that kind of thing.  
5 I support the teachers in this, something like that.

6 And at that meeting, we were looking for that  
7 recognition, that he supported us. I do remember at one  
8 point they asked him, and I believe he deferred to Mr.  
9 Baksa to speak on the issue.

10 And then when asked which version -- A, B or C --  
11 basically, he said basically what is on here, the  
12 administration and staff recommend these changes. So we  
13 were disappointed in that we wanted more of I think this  
14 or I support the teachers, you know what I mean,  
15 something like that.

16 I remember looking for that recognition and  
17 feeling disappointed at what we got.

18 Q. When you say administration and staff, Jen, are you  
19 referencing the XI-C in other words?

20 A. Right or B. Like I said, we told him at that meeting we  
21 would like B.

22 Q. You see what I am getting at there? Did you have a  
23 sense for whether Mr. Baksa's comment related  
24 specifically to XI-B to XI-C?

25 A. When you say Mr. Baksa's comment, his comment about

00128

1 what?

2 Q. In other words, the Board questions Nilsen. Nilsen  
3 defers to Baksa do you support this. You have a  
4 recollection of Mr. Baksa saying we are for the  
5 administration and staff version.

6 Before the Board at that time are two  
7 administration and staff versions.

8 A. Right.

9 Q. Was there one that was subject to discussion at that  
10 particular point in the Board meeting?

11 A. I would think so, yes. And I don't remember which one  
12 they were on at that point.

13 Q. But you do know that at least you had a discussion about  
14 the note reflected in XI-C with Dr. Nilsen prior to this  
15 meeting?

16 A. Yes.

17 Q. How about Mike Baksa, did you and Mike sit down and talk  
18 about these same issues in the period between  
19 October 8th and October 18th?

20 A. I think that was the e-mails going back and forth --  
21 here is a version, what do you think, that kind of  
22 thing.

23 Q. You do recall some communication?

24 A. There was a lot of things going back and forth. Do you  
25 approve this? I don't remember if this particular one

00129

1 was there or not. That, I don't remember.

2 Q. All right. So after October 18th, what did you see,  
3 Jen, as the next step?

4 MR. GILLEN: Off the record.

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

6 AFTER RECESS

7 BY MR. GILLEN:

8 Q. Jen, if you would look at Miller 3, you will see minutes  
9 for the November 1st, 2004 Board meeting.

10 A. Yes.

11 Q. Before we get to those, I would just like to ask you if  
12 you look -- I want to focus your attention on the events  
13 between the October 18th, 2004 Board meeting which voted  
14 in the curriculum change and then this November 1st,  
15 2004 Board meeting.

16 Can you recall events from that period bearing on  
17 the curriculum change, what was next in this story?

18 A. At some point in there, we had told administration --  
19 again, I think Mr. Baksa was in on that discussion that  
20 at this point, we want specific direction as to if this  
21 is going to be in our curriculum, what are we to say.  
22 What exactly word for word are we going to say

23 Q. With that in mind, Jen, I would like for you to look at  
24 Miller 5 and this document. I believe you will find --  
25 it looks like it is an e-mail from Bert Spahr. It has

00130

- 1 got a handwritten notation 10/28/04 at the top.
- 2 A. There, it is. Yes.
- 3 Q. Does that look familiar to you?
- 4 A. Yes.
- 5 Q. That has got a handwritten notation 10/28/04. That  
6 would be ten days after the Board meeting. Do you  
7 recall any events between October 18th and October 28th?
- 8 A. No.
- 9 Q. Do you think that this e-mail, which is a statement, a  
10 District note on the teaching of Evolution to be read to  
11 all biology classes, is that the next development in the  
12 story?
- 13 A. Yes.
- 14 Q. Did you mark this document up, Jen?
- 15 A. Yes.
- 16 Q. Tell me sort of how you got it and what you understood  
17 its purpose to be?
- 18 A. It was again from our request, that we would like  
19 specific directions as to what we are going to say. It  
20 was given to us to look over -- to be as it says at the  
21 top, to be read to all biology classes.
- 22 Q. Okay. There's some handwritten notations there which  
23 you have indicated are yours; right?
- 24 A. Yes.
- 25 Q. Tell me what you were getting at with those notations.

00131

- 1 A. We had gotten this. When I originally got this to look  
2 over, I believe our original instinct was to do nothing  
3 with it. Again, we wanted directions as to what we were  
4 to say after discussing it with one of our Union  
5 meetings. Tom Scott was there. We discussed it with  
6 him. We showed him this.
- 7 Q. Don't tell me what Tom Scott --
- 8 A. Right, right. It was basically decided that we were  
9 being asked by administration to change this, to look  
10 over it, to make changes, that type of thing. So  
11 basically you could change it for any science  
12 inaccuracies. If there's errors in the science, that we  
13 could change those.
- 14 Q. Do you know who generated this document that you in turn  
15 marked up?
- 16 A. Mr. Baksa.
- 17 Q. And did you speak with Mr. Baksa about his draft or the  
18 purpose of his draft?
- 19 A. Through e-mails, yes. I mean it says at the top, it is  
20 to be read. Again, we wanted direction. If this  
21 Intelligent Design is going to be in our classroom, we  
22 wanted direction as to what we were to say.  
23 This was our understanding of what we were to say.
- 24 Q. And you marked it up, Jen. Tell me why.
- 25 A. At the bottom are some of my changes. Let's see here.

00132

1 I wanted the -- I added the definition of a theory. I  
2 thought a scientific theory, the definition of what a  
3 scientific theory should be in there. I added that.  
4 Again, that was more of the science of it.

5 You can see I rewrote some of the things. I  
6 didn't change too much.

7 The other thing that I believe -- here where it  
8 says individuals may subscribe to other theories of  
9 Evolution including Intelligent Design, I again reworded  
10 that because I didn't believe that Intelligent Design is  
11 a theory of Evolution. To me, it is counter to  
12 evolution so it can't therefore be a theory of  
13 Evolution.

14 Most of the other stuff I believe I left as is. I  
15 may have switched it from one paragraph to the next, but  
16 I left it pretty much.

17 Q. If you look at the paragraph that is at the bottom of  
18 the page?

19 A. Mine or the typewritten?

20 Q. Good question. The paragraph at the bottom with the two  
21 circled.

22 A. Okay.

23 Q. Read that. What were you getting at there, Jen?

24 A. I believe -- I mean if you look at where the two is  
25 circled up above in the typewritten, I think that I just

00133

1 took what was in number one there. At the very end, it  
2 says including Intelligent Design which accounts for the  
3 origin of species with an explanation different than  
4 Darwin's.

5 I believe that I just took that and moved it down  
6 to the second one where I have Intelligent Design is an  
7 explanation of the origin of life that differs from  
8 Darwin's view.

9 So I basically took the word theory out of  
10 Intelligent Design and put view instead of theory.  
11 Otherwise, that text isn't much different from what was  
12 written.

13 Q. How about the reference there to origin of life?

14 A. Again as I said before, Intelligent Design -- reading  
15 the Of Pandas and People is an explanation of the origin  
16 of life.

17 Q. And by that, Jen, do you mean that it was addressing  
18 aspects of biological theory that you did not address in  
19 your classroom presentation or what? I am trying to see  
20 what you were getting at there.

21 A. Well, I guess so. Because in his definition, he has  
22 which accounts for the origin of species. We had tried  
23 to differentiate between the origin of species and the  
24 origin of life.

25 I was using my science background to say that

00134

1 Intelligent Design isn't necessarily a theory -- a view  
2 on the origin of species. It is more on the origin of  
3 life.

4 Q. When you suggested that change, did you give any  
5 consideration to the way in which that might relate to  
6 the curriculum change that had been voted on by the  
7 Board?

8 A. Like what; in what ways?

9 Q. You know, it seems like these terms have been sort of  
10 bandied about, used by you in a more technical sense,  
11 used by others in sort of a vaguer sense.

12 The curriculum change says that origins of life  
13 will not be taught. And this change says Intelligent  
14 Design is an explanation of the origin of life.

15 Were you -- I mean it is plain or it seems to --  
16 do I understand you correctly you understood Intelligent  
17 Design as being a theory that addressed the origin of  
18 life?

19 A. Yes.

20 Q. Is that why you were describing it that way here?

21 A. Yes.

22 Q. So in a sense then, this change as proposed seems to  
23 reflect the curriculum change. Or was that your goal?

24 A. My goal was simply to look at and change it for the  
25 science of it basically. I mean I don't think that I

00135

1 necessarily had the curriculum change in the back of my  
2 mind as I was doing this.

3 But my goal was to simply change it, as I said,  
4 for the science. I added the definition of a scientific  
5 theory and those types of things to it.

6 Q. Okay. If you look back up at the top typewritten  
7 paragraph Darwin's Theory of Evolution continues to be  
8 the dominant scientific explanation for the origins of a  
9 species.

10 At least this statement as incorporated in your  
11 changes would have described Darwin's Theory of  
12 Evolution as one addressing the origin of species, and  
13 Intelligent Design Theory as one addressing the origin  
14 of life.

15 Do you see them as properly contrasted in that  
16 way?

17 A. Yes, I would say so. I mean if anybody was at the  
18 Michael Behe lecture here at the school -- at the School  
19 District, he essentially said the same thing. So that  
20 there are parts of the Theory of Evolution in the origin  
21 of species that he has no problems with. And it is the  
22 part of Evolution that deals with the origin of life  
23 where his theory comes into play.

24 Q. And, Jen, just so I am understanding you, his reference  
25 to the origins of life you understood to mean what part

00136

1 of that process, the microbiological?

2 A. The history of -- yes, how things came to be basically.  
3 Again Intelligent Design would say that we see complex  
4 things that could not have come through small, little  
5 steps like natural selection. They had to have been by  
6 an intelligent designer.

7 That to me, is origin of life. Where did life  
8 come from?

9 Q. I am understanding you better. So when you look at  
10 Evolutionary Theory then, I know how you presented it,  
11 but as a biologist, do you consider Evolutionary Theory  
12 as not addressing that part of the process of life you  
13 have just described, the origins of life forward to  
14 species?

15 A. I think that there is a part of it that does, yes. I  
16 think that the overall umbrella of Evolutionary Theory,  
17 yes, there is a part of it that does address origins of  
18 life.

19 Again, what is taught in the biology curriculum  
20 here is not -- and we stay away from that issue because  
21 that is a controversial issue.

22 Q. And I think I understand this page better now, but this  
23 different description of the two theories, Theories of  
24 Evolution as addressing origins of species, Intelligent  
25 Design theory as addressing origin of life was based on

00137

- 1 your assessment of the thrust of those theories?
- 2 A. Sure.
- 3 Q. Now there is a note there above the first typewritten  
4 paragraph. It says scientific explanation. Then above  
5 that has handwritten remove by them.
- 6 What are you getting at there, Jen?
- 7 A. That was after the final draft was done, which is  
8 probably several pages back here, maybe two pages back  
9 in that. I was just sort of making notes comparing my  
10 version that I sent to what the final version was, the  
11 final draft was.
- 12 Q. Let's look at that, Jen, and just give me a sense for  
13 how this unfolded here. The next page is another --
- 14 A. That is the actual typewritten e-mail that I sent. And  
15 the bold is stuff that I had changed.
- 16 Q. Those changes reflect the handwritten notations we have  
17 just discussed?
- 18 A. Yes. They may not be exact, but this typewritten  
19 version is what I e-mailed.
- 20 Q. We're looking now at the next page in Exhibit 5 which  
21 has a handwritten notation 11/5/04 at the top. It's  
22 bolded and numbered; right?
- 23 A. Right.
- 24 Q. Those changes, you have already talked about right?
- 25 A. Yes.

00138

- 1 Q. Then the next page which bears the date 11/15/04 on the  
2 bottom left, what is that, Jen?
- 3 A. I believe that's -- I don't think it is the very final  
4 version, but that's the version after I sent mine, what  
5 came back as a draft again.
- 6 Q. If you look at Exhibit 4, the handwritten notes, page  
7 three circled in the upper right-hand corner, we have  
8 got kind of a timeline you have worked out. I just want  
9 to make sure these match.
- 10 October 28, 2004, presented draft to be read to  
11 biology classes written by Mr. Baksa?
- 12 A. Yes.
- 13 Q. And that is the document that has 10/28/04 on the top?
- 14 A. Yes.
- 15 Q. Look further down Exhibit 4, page three, you will see an  
16 entry for November 5th, 2004, Jen sends corrections to  
17 draft?
- 18 A. Yes.
- 19 Q. Is that the second document we looked at?
- 20 A. Yes.
- 21 Q. Which has a date 11/5/04?
- 22 A. Yes.
- 23 Q. Now November, if we look again at Exhibit 2, page number  
24 three, there is an entry November 15, 2004, Mr. Baksa  
25 removed definition of theory from draft?

00139

1 MS. PENNY: Exhibit 2?  
2 BY MR. GILLEN:  
3 Q. Exhibit 2.  
4 A. I think it is Exhibit 4.  
5 MR. GILLEN: I am sorry. You are right, Jane.  
6 Exhibit 4?  
7 BY MR. GILLEN:  
8 Q. Right?  
9 A. Yes.  
10 Q. Is that this third document we have been looking at with  
11 the date 11/15/04 noted?  
12 A. Yes.  
13 Q. The question I have is this, Jen: In Exhibit 4,  
14 numbered page three, the entry for November 15th, 2004,  
15 says Mr. Baksa removed definition of theory from draft.  
16 Now if I look at the document which reflects your  
17 changes dated November 5th, '04, I don't see a  
18 definition of theory.  
19 A. It is in the second paragraph.  
20 Q. Okay.  
21 A. Mine says because Darwin's Theory is a theory, there is  
22 a significant amount of evidence that supports the  
23 theory; although, it is still being tested as new  
24 evidence is discovered.  
25 The version on the 15th says because Darwin's

00140

1 Theory is a theory, it is still being tested as new  
2 evidence is discovered. That's the definition of theory  
3 that was removed.

4 Q. All right. I just want to make sure I understand what  
5 you mean there. In the document dated 11/5/04, where is  
6 the definition of theory?

7 A. In the second paragraph.

8 Q. Okay.

9 A. Where it says because Darwin's Theory is a theory --  
10 right there is the definition, this is the definition of  
11 theory -- there is a significant amount of evidence that  
12 supports the theory.

13 Q. Okay. It wasn't clear to me. That's fine. What did  
14 you see as the important issues, Jen, that were being  
15 worked out here in the competing versions of this  
16 statement?

17 I see that you said you were trying to focus on  
18 the scientific content of it and make it accurate. Is  
19 there anything else?

20 A. No. That that was my goal to -- for the science of it.  
21 So it was scientifically for the most part accurate.

22 Q. Do you know, Jen, if there is a further version of that  
23 statement?

24 A. Yes. It would be somewhere around November 19th I  
25 believe is when the press release was released. That is

00141

- 1 in this same -- what are we in, 5?
- 2 Q. Yes. There you have it.
- 3 A. It is on the -- I only have one page of this. It is  
4 double sided. It was on the back of that page. I have  
5 it.
- 6 MS. PENNY: Off the record.  
7 (An off-the-record discussion was had.)
- 8 BY MR. GILLEN:
- 9 Q. Have we got it now, Jen?
- 10 A. Yes.
- 11 Q. You have shown me pages from Exhibit 5 with a  
12 handwritten notation handed to us on 11/19/04 by Baksa  
13 in the upper left-hand corner; correct?
- 14 A. Yes.
- 15 Q. And the second page of that document has four indented  
16 paragraphs?
- 17 A. Yes.
- 18 Q. As you look at those, Jen, is that the final version of  
19 the statement?
- 20 A. I believe so.
- 21 Q. Have the documents that we have discussed been  
22 precursors to this?
- 23 A. Yes.
- 24 Q. There is a definition of theory in that statement, Jen?
- 25 A. Yes.

00142

- 1 Q. Do you know where that came from?
- 2 A. I believe that was through e-mails. Again, when Mr.  
3 Baksa sent me this, the last copy that we were talking  
4 about, he asked what I thought. I said that you removed  
5 the definition of theory. I think it needs to be there.
- 6 Q. Okay. And did he ask you for a definition or I guess  
7 what I am asking is did you provide that definition?
- 8 A. Yes.
- 9 Q. Let's flip back to Exhibit 3, the minutes for the  
10 November 1st Board meeting. Looking finally at that  
11 statement, did you have any objections to that statement  
12 when it came out, to the scientific substance of it?
- 13 A. No. Our objection was the wording at the bottom of the  
14 first page where it said in coordination with the  
15 Science Department teachers because we felt like that  
16 implied that we agreed with Intelligent Design and that  
17 type of thing.
- 18 And that is why the letter that is attached to  
19 that was sent -- or behind that was sent.
- 20 Q. Okay. So you felt -- looking at that document is a  
21 portion of Exhibit 5, a page that has November 19, 2004  
22 in the upper left-hand corner; correct?
- 23 A. Yes.
- 24 Q. Signed by a number of the science teachers and the Union  
25 representative?

00143

- 1 A. Yes.
- 2 Q. Does that state your basis for objection?
- 3 A. Yes.
- 4 Q. And if I understand you right, Jen, it was that you felt  
5 that -- you were opposed to the addition of Intelligent  
6 Design to the curriculum, but you felt like that press  
7 release when it indicated input in the statement tended  
8 to make it look like you agreed with the addition of it?
- 9 A. Yes.
- 10 Q. Let's look at the minutes for the November 1st Board  
11 meeting. Did you attend that meeting?
- 12 A. Yes.
- 13 Q. I see you have got some notes that follow those minutes.  
14 There are some names listed there Cynthia Corbett, be  
15 Bryan Rehm, Michael Arnold. Why are those --
- 16 A. I believe at that point, they were listed as people that  
17 were running for the Board to replace I guess at that  
18 point the Browns. I guess it was the Browns and  
19 Mr. Wenrich and Jane Cleaver. They were all leaving.  
20 The Browns had resigned, and Wenrich and Cleaver were  
21 leaving because they moved I believe.
- 22 Q. Then if you look at the next page of your notes, there  
23 is some blocked comment there, we have met with  
24 curriculum committee agreed to --
- 25 A. I don't remember what that is.

00144

- 1 Q. Didn't complete that thought?  
2 A. No.  
3 Q. Beneath that, evolution equals?  
4 A. I don't know.  
5 Q. You are not alone in that. Beneath that, Bonsell, some  
6 comments attributed to him. Does that trigger any  
7 recollection on your part as to what Mr. Bonsell said at  
8 the November 1, 2004 Board meeting?  
9 A. Just something to the effect that some parts of the  
10 October 18th meeting -- and I think again because of  
11 Mr. Buckingham's statements to Mrs. Spahr after she read  
12 and some of his other comments to other people as they  
13 spoke, we felt that someone should have stood up and  
14 said something to squash some of those comments.  
15 And so I think -- I don't know if it was a member  
16 of the Association or what, but someone communicated  
17 that to the administration. So I think he was making  
18 the statement that he also was not happy with the last  
19 Board meeting. He needed to sort of calm everything  
20 down.  
21 Q. Just to make sure, I understand that some of the  
22 exchanges were not very civil?  
23 A. Right.  
24 Q. There's some notes here from Noel Wenrich. Noel flipped  
25 out. What is that reflecting?

00145

- 1 A. He yelled -- got up very -- basically was yelling at  
2 Mr. Buckingham that he needed to apologize, that he was  
3 telling them at the last meeting that he was  
4 unpatriotic. He was questioning his patriotism,  
5 questioning his religion. And that he needed to  
6 apologize.  
7 He was told to sit down, and he kept yelling. And  
8 he eventually walked out and was yelling the whole time  
9 that he was walking out.  
10 Q. Walking out of the Board meeting?  
11 A. Yes.  
12 Q. There is a comment for Snook?  
13 A. Yes.  
14 Q. Was he just asking about who was donating Of Pandas?  
15 A. Yes.  
16 Q. And then Barrie, is that Barrie Callahan?  
17 A. Yes. There's a quote that I had said earlier. That  
18 must be the meeting that she addressed that, that she  
19 thought the entire book is on origins of life and that  
20 is a contradictions if we can't teach origins of life.  
21 Q. And the contradictions she is pointing to is between the  
22 curriculum note --  
23 A. Yes.  
24 Q. -- origins of life is not taught and the notion that  
25 Intelligent Design addresses?

00146

- 1 A. Yes.
- 2 Q. During that exchange, was there any discussion by any of  
3 the Board members of we're not asking the teachers to  
4 teach it?
- 5 A. I believe so, yes. I don't remember if it was at this  
6 specific meeting, but I remember that being said at  
7 Board meetings.
- 8 Q. Let's just run through the rest of these notations. You  
9 have got a notation for Baksa, solicitor's opinions  
10 given to the Board?
- 11 A. I think someone asked -- I guess the previous question  
12 -- I guess Barrie asked what was the solicitor's opinion  
13 of this addition to the curriculum. And I think at that  
14 point Mr. Baksa stood up and said that they were getting  
15 the solicitor's opinions, and they were cautionary to  
16 the Board.
- 17 I don't know what that last statement -- and I  
18 have a quote that they were being as safe as possible.
- 19 Q. There's Nilsen, no specific direction to change any  
20 wording. Do you recall that?
- 21 A. That the solicitors had given them no specific direction  
22 to change any wording in the curriculum change.
- 23 Q. Then Barrie, that is Barrie Callahan; right?
- 24 A. Yes.
- 25 Q. Listened to tape recording of public record?

00147

- 1 A. She wanted to listen to the tape recordings of the  
2 October 18th meeting.
- 3 Q. Then there's some notation for Nilsen about the right of  
4 the Board to decide if it's public record?
- 5 A. Yes.
- 6 Q. And then a notation there that is under Nilsen's name  
7 that says other areas to look at, Buckingham, not at  
8 this time; do you recall?
- 9 A. I believe that was Barrie talking again. Dr. Nilsen  
10 answered her. And then Barrie spoke again and said now  
11 that you changed the biology curriculum, what areas are  
12 you going to go after next? What curriculum are you  
13 going to go after next? She was addressing that to Mr.  
14 Buckingham.
- 15 And he replied none at this time, or not at this  
16 time.
- 17 Q. Bryan Rehm, anything that he said that jumps out?
- 18 A. He was reiterating that the behavior at the last meeting  
19 was unacceptable. He also asked to hear the tape, and  
20 he was sorry that he couldn't hear it.
- 21 Q. Then there's some comments for Casey Brown.
- 22 A. I have February there, but that was October. Reconsider  
23 the actions taken on the 18th. She hopes that they will  
24 reconsider the actions taken on the 18th of October, not  
25 February.

00148

1           She thought that students were being ridiculed.  
2           It was going to cost taxpayers money. And she wanted to  
3           offer a compromise, that they can teach a course in  
4           comparative religions, and it could be in that course  
5           instead of in the science class. And then I have that  
6           quote from her.

7 Q.       That quote is thou shall do unto others as you would  
8           have them do unto you?

9 A.       Yes.

10 Q.      What was she getting at there?

11 A.      My understanding was that she was telling the Board that  
12         you should treat others as you would like to be treated.  
13         Stop making some of the comments that you are making,  
14         some of the heated comments that were made at previous  
15         meetings.

16 Q.      You don't think that was tied to the notation above it  
17         to the course on comparative religions?

18 A.      No, I don't believe so.

19 Q.      The next page, there is a reference to cash registers?

20 A.      At some point in the meeting, they discussed old out  
21         dated cash registers and what they were to do with them.  
22         They had asked -- I didn't know his name -- Mr.  
23         Bonsell's father something about looking at them, or how  
24         much would they get for them at auction.

25                 And I just had that he didn't hear because he

00149

- 1 looked up and said sorry, I was reading my Outdoor Life.  
2 I just thought it was funny so I included that.
- 3 Q. It sounds like the Board meetings were scintillating.  
4 A. They were very interesting, yes.
- 5 Q. Let me ask you if you would look at this November 1st  
6 Board meeting, was the curriculum -- apart from these  
7 comments you have referenced, was the curriculum issue  
8 much discussed?  
9 A. I don't believe so, no.
- 10 Q. Do you recall any of the Board members speaking to the  
11 curriculum change at the Board meeting?  
12 A. Other than here where Noel Wenrich was addressing the  
13 previous one and Casey said please reconsider the  
14 actions taken on October 18th, I don't remember any, no.
- 15 Q. Do you remember any reply on the part of any Board  
16 members to the comments made by Casey Brown?  
17 A. No.
- 18 Q. Looking at the period between October 18th and this  
19 Board meeting on November 1st, did you have -- there has  
20 been some discussions or communications relating to this  
21 statement.  
22 Did you have any communications with Dr. Nilsen  
23 relating to this statement?  
24 A. I don't believe so. Not until after the press release.  
25 Q. Did you have any conversations with Mike Baksa about the

00150

- 1 statement?
- 2 A. I think it was just those e-mails back and forth.
- 3 Q. About revisions to the drafts?
- 4 A. Yes.
- 5 Q. How about your colleagues, apart from your meeting with
- 6 Mr. Scott, did you have any discussions with your
- 7 colleagues about the statement?
- 8 A. Again, I think originally we were leery. We didn't want
- 9 anything to do with it. That was our discussion. But
- 10 other than that, I think that was it.
- 11 We really -- it was not like anything with reading
- 12 the statement or that kind of thing.
- 13 Q. In this period between October 18th and November 1st,
- 14 did you speak with any Board members individually?
- 15 A. No.
- 16 Q. How about any people that just left the Board, Noel
- 17 Wenrich?
- 18 A. No.
- 19 Q. Angie Yingling?
- 20 A. No.
- 21 Q. She was still on at that time. Casey Brown apart from
- 22 the hug?
- 23 A. No.
- 24 Q. Jeff Brown?
- 25 A. No.

00151

- 1 Q. Did you ever speak to Don Bonsell about the matter?  
2 A. No.  
3 Q. It looks like the next minutes relate to December. Let  
4 me ask you: When the press release was released by the  
5 administration containing the statement, the final  
6 version, was there any discussion between the  
7 administration and the faculty at that time relating to  
8 implementation of the statement?  
9 A. I don't believe so. I know that we had discussions of  
10 that after the press release was released, but I don't  
11 remember any before that.  
12 Q. Okay. So tell me what the discussions were after the  
13 press release was released.  
14 A. We had a meeting I have here the 24th of November. It  
15 was in this room where we met with Dr. Nilsen and Mr.  
16 Baksa and some Union representatives. I am trying to  
17 think who else was there. I know Bill Miller was there  
18 and Brad Neal were there as part of the Union  
19 representation. I know Rob Eshbach was there, and  
20 Bertha Spahr was there.  
21 And again, we addressed our concerns. Dr. Nilsen  
22 wanted to know basically why we sent him the statement  
23 that said that we --  
24 Q. Dated November 19, 2004?  
25 A. Yes, that we all signed.

00152

1 Q. So there was some discussion of the statement?

2 A. Yes.

3 Q. And I take it -- was there anything apart from --  
4 anything communicated by the teachers to the  
5 administration apart from what was contained in the  
6 statement, itself?

7 A. Written like this?

8 Q. No. In the meeting, what was said?

9 A. Basically, that we have come out negatively against  
10 this, and we do not want to be lumped in with -- because  
11 at that point, we were getting lots of e-mails that said  
12 stand up to the Board. Lots of our colleagues were  
13 saying you need to get this Intelligent Design out.

14 We didn't want it said that we were in agreement  
15 with the Intelligent Design -- putting Intelligent  
16 Design into our curriculum. This is my notes.

17 Dr. Nilsen told us that the purpose of the press  
18 release was -- I have he said he was protecting himself  
19 and us. Again, I think we reiterated that we wanted  
20 someone to stand up and say they support the teachers or  
21 something. And I believe he said you have come out  
22 negatively against this, and they agreed that we had  
23 been nothing but cooperative.

24 And at that point, I know that he gave us a  
25 statement that he was going to read on the Gary Sutton

00153

- 1 Show.
- 2 Q. Okay. Apart from that -- what are you looking at there?
- 3 A. It is at the very beginning of Exhibit 5.
- 4 Q. Thanks. This is meeting on 11/24?
- 5 A. Yes.
- 6 Q. Were any of the Board members present?
- 7 A. No. I don't believe so.
- 8 Q. And at that time, did you express any reservations about
- 9 the statement itself?
- 10 A. I know that I remember Bill Miller, again the
- 11 representative from the Union, saying that we would like
- 12 no parts of this. I remember him saying that, I think
- 13 even holding the statement up. We would like to be as
- 14 far away from this as possible, or something to that
- 15 effect.
- 16 Q. Anything more specific?
- 17 A. There was a lot of discussion on whether my changes
- 18 constituted -- there was a lot of words, did that
- 19 constitute develop the procedure and that kind of thing.
- 20 It was a lot of, again, upset about the wording of the
- 21 press release.
- 22 Q. Are you getting at there your notion that your input was
- 23 sort of narrow and technical as opposed to implying any
- 24 endorsement of the curriculum change itself?
- 25 A. Exactly, right. I can change it does not necessarily

00154

- 1 mean I agree with it.
- 2 Q. The second page of Exhibit 5?
- 3 A. Yes.
- 4 Q. There's some notes there less is more, keep it short,  
5 untrue version of what we said, correcting inaccuracies  
6 scientifically of draft supplied. Is that getting at  
7 what you just explained?
- 8 A. Yes. I believe these are Leslie Prall's notes so she  
9 must have been at that meeting, too.
- 10 Q. There is a notation there of a meeting on November 24th.
- 11 A. She has a.m. meeting and then p.m. meeting. I am not  
12 exactly sure. I don't remember what the difference  
13 there was.
- 14 Q. There a protect in class notation there at the bottom,  
15 does that spark any memory on your part?
- 16 A. Again, the only thing I can remember is back to what he  
17 was saying -- Dr. Nilsen was saying his purpose of the  
18 press release was to protect us. Again, we were saying  
19 how we were feeling pressure by being put in the middle  
20 here again.
- 21 Is there a possibility that we could be sued? And  
22 I remember that Dr. Nilsen was saying that the purpose  
23 of his press release was to try to protect us of what  
24 was said in the classroom.
- 25 Q. Looking at this handwriting, you think it is Leslie

00155

- 1 Prall's?
- 2 A. Yes.
- 3 Q. How about there is a notation there stack of Bibles?
- 4 A. I think if I remember correctly, something was said -- I  
5 don't even know what context it was -- I can swear on a  
6 stack of Bibles. I think that is what she wrote. I  
7 don't know.
- 8 Q. If you flip that page over all, you'll see a few other  
9 notes. I want to see if they spark any recollection on  
10 your part.
- 11 There is a note there phrase by directive of the  
12 Super and Assistant. Does that make you think of  
13 anything?
- 14 A. No, I don't -- I don't know. I don't know what that is.
- 15 Q. Legal issues, do not speak to media?
- 16 A. We had a question at that meeting whether or not because  
17 we had been getting all kinds of media attention,  
18 questions from the media, we had asked them is it okay,  
19 can we speak to the media?
- 20 He said there is no gag order on. If you are  
21 speaking to the media, just make sure that your  
22 statements are true and correct.
- 23 Q. The next page looks like handwritten notes that have you  
24 brought it on on the top. Is that your writing, Jen?
- 25 A. Yes.

00156

- 1 Q. Were these notes from this meeting in November?  
2 A. No.  
3 Q. So what happened after the November 24th meeting?  
4 A. I mean the next thing on our timeline is in December --  
5 December, the lawsuit was filed. I guess it was  
6 around-- after the -- I guess before this in November,  
7 I know that we had e-mailed Mr. Baksa that we would like  
8 our -- when we write a curriculum, it says who wrote the  
9 curriculum at the top.  
10 Since they had made those changes in Intelligent  
11 Design we disagreed with, we asked for our names to be  
12 removed from the curriculum. I know that was in  
13 November, but I think that was early November.  
14 Q. Look at Exhibit 3, minutes for the December 1, 2004  
15 Board meeting.  
16 A. December?  
17 Q. December. December 1, 2004.  
18 A. Okay.  
19 Q. Are those your notes?  
20 A. Yes.  
21 Q. If you flip over to the second page beneath the agenda,  
22 Item X, Students Report, there is a notation there. It  
23 says Heather Geesey, our business is for you offended.  
24 What is that reference? What was going on at this  
25 meeting?

00157

1 A. At this meeting, I believe there was people upset about  
2 changes in public comment, that they were going to  
3 change the public comment; that it was only going to be  
4 for agenda items only. Because obviously, there was a  
5 lot of people that wanted to speak to the Intelligent  
6 Design issue.

7 So they were making some changes that -- I have  
8 there beside public comment, that the public comment  
9 before the meeting was only for items on the agenda.  
10 And after the meeting, you could make any comment, but  
11 you couldn't ask any direct questions of the Board.

12 If you wanted to ask a direct question, you could  
13 e-mail them, or call them, and write them down ahead of  
14 time, and they would answer them then.

15 Q. So your comments on that page, Jen, are they related to  
16 that portion of the discussion?

17 A. Yes, I believe so.

18 Q. Flip over to page six of the minutes.

19 A. (Witness complies.)

20 Q. XIV is Curriculum. Was the Intelligent Design  
21 curriculum change discussed at this point in the  
22 meeting?

23 A. No.

24 Q. There is a comment, it's a lot of fun, it's not like  
25 this. Did Angie Yingling say that?

00158

- 1 A. Yes.
- 2 Q. Next page, the public comment section, there's some  
3 notes there. I just want to see what you --
- 4 A. Barrie Callahan, I think she may have been -- she may  
5 have been addressing, goodness, the case in Georgia I  
6 believe where they had the stickers removed, and she  
7 wanted to add her own sticker to the books. And it is  
8 above there. I stuck it to my notes when I copied it.  
9 She wanted to offer her own stickers.
- 10 Q. All right. Did she bring that to the attention of the  
11 Board?
- 12 A. Yes, yes.
- 13 Q. Do you recall any response on the part of the Board  
14 members; did they dignify that situation with a  
15 response?
- 16 A. No, no.
- 17 Q. There is a Larry there. Who is that?
- 18 A. Larry Snook. He was asking -- he said basically, he  
19 couldn't care less about the curriculum. He wanted to  
20 know who was going to pay the bills. If there was a  
21 legal -- if there was legal issues, who was going to pay  
22 the bills? Would the taxpayers pay the legal bills?  
23 And we had been cutting field trips. So how can  
24 they cut field trips and then pay for legal bills,  
25 basically?

00159

- 1 Q. Then Angie, there is a comment attributed to Angie.  
2 What is that?
- 3 A. I believe at that time, she said that she definitely  
4 wanted to revisit the issue of Intelligent Design.
- 5 Q. Was there any response on the part of the Board to that  
6 suggestion?
- 7 A. I don't believe so because that is why I have question  
8 marks there. It was just sort of one statement, and  
9 that was it. I was wondering what that meant.
- 10 Q. When you say wondering what that meant, I mean what are  
11 you getting at, Jen?
- 12 A. When she said revisit the issue, did that mean she  
13 wanted to force another vote? What did that mean? Was  
14 she going to discuss it at another meeting? I didn't  
15 know exactly at that point what that meant.
- 16 Q. Then there's some comments for Noel Wenrich. What is  
17 that all about? Is he speaking as a member of the  
18 public at this point?
- 19 A. Yes. I don't know if those were -- he stood up and  
20 asked a question because then I have an arrow there to  
21 Sheila Harkins who said that this is not the time for  
22 questions. And she had said a couple of times during  
23 there, do we need a five-minute break? She had taken a  
24 five-minute break before. I think she said that again  
25 there, that people were not using proper decorum.

00160

- 1 I think that was Sheila Harkins, not Noel. He may  
2 have said something before that, but I don't have it  
3 written down.
- 4 Q. Flip the page over. There is a statement attributed to  
5 Lonnie. Is that Lonnie Langione?
- 6 A. Yes.
- 7 Q. Did he address the Board's action in changing the  
8 curriculum?
- 9 A. No. His was on he appreciated his time as Board. He  
10 said it is a thankless job. And that compensation  
11 should not be -- because you don't get paid to be a  
12 School Board Director, it is not in the money, but it is  
13 in the kids.
- 14 His suggestion was to make sure they have a  
15 solicitor present at meetings.
- 16 Q. Did he say why?
- 17 A. Because he thought that they were getting into some  
18 legal issues with the public comment and the Sunshine  
19 Law. And I think part of that was the Intelligent  
20 Design issue, also.
- 21 Q. Did he reference that?
- 22 A. I don't think so. I guess I assumed that.
- 23 Q. How about Jeff Brown? There is a comment. What did  
24 Jeff say?
- 25 A. I think he was just reminding them that they are public

00161

1 servants, that they need to serve the public, and he  
2 felt that they were looking down their noses at others.  
3 He is glad he resigned from the group.

4 Q. Did he elaborate on that looking down noses at others?

5 A. I don't believe so.

6 Q. Then there's some notes that are linked to Alan Bonsell?

7 A. Yes. Someone mentioned something about a quorum, and I  
8 don't know what that was in reference to exactly. But  
9 that that was checked out, and that their attorneys have  
10 looked at statements, and no laws are being broken.

11 And then he was -- at the end here, he was saying  
12 that before he was a member of the Board if he had to  
13 address the Board, he tried to be very respectful. He  
14 didn't yell out. If I was gaveled, I sat down. I  
15 didn't keep talking. And that the public comment that  
16 they were implementing was the same way that it was when  
17 Lonnie Langione, Larry Snook and Barrie Callahan were on  
18 the Board.

19 Q. Apart from these notes and whatever recollection you  
20 have, do you remember anything else that transpired at  
21 this Board meeting?

22 A. No.

23 Q. Anything else relating to the statement in the period  
24 between November 19th of the press release and this  
25 December 1st Board meeting? Any other exchanges with

00162

1 the Board between you and the Board members about the  
2 curriculum change or statement?  
3 A. No.  
4 Q. Any exchanges you can remember between you and members  
5 of the administration regarding the statement?  
6 A. Are you saying after November 19th?  
7 Q. Yes.  
8 A. Other than the meeting that we had on November 24th, I  
9 can't remember any in particular, no.  
10 Q. If you look at the next portion of Exhibit 5, it is  
11 Board minutes for the December 20th meeting. Did you go  
12 to that?  
13 A. Yes.  
14 Q. You have got some notes here. Warren Eshbach, is he  
15 related to Bob Eshbach?  
16 A. Yes, Rob Eshbach.  
17 Q. I am sorry, Rob. Looks like he was counseling caution?  
18 A. Yes.  
19 Q. Do you recall the thrust of his comments?  
20 A. This was a meeting where it was called to approve Thomas  
21 More Law Center. All of these people were I guess  
22 giving their opinions on whether or not to hire or not  
23 to hire Thomas More Law Center.  
24 And I believe Mr. Eshbach's comments were that  
25 this community, I have there it is fractured at this

00163

1 time. There's a lot of fighting in the community, and  
2 that the comment under there is I believe from someone  
3 on the Board. My recollection is Sheila Harkins that he  
4 has to limit his comments to the agenda, to make sure he  
5 limits those comments. Because that is why they were  
6 having the comment period.

7 He did switch and say don't hire Thomas More until  
8 a discussion is held with reason on all sides.

9 Q. All right. There is a comment there referring to Jeff  
10 Brown don't hire Thomas More, it exists to promote the  
11 Christian religion.

12 The Board has said it is not promoting a specific  
13 religion?

14 A. Yes.

15 Q. Do you recall Mr. Brown making a statement to that  
16 effect?

17 A. Yes.

18 Q. Anything else you recall about what he said?

19 A. No, that was the gist. That if they are promoting  
20 science education and not promoting religion, then they  
21 shouldn't hire the Thomas More Law Center.

22 Q. The next page, there is a reference to Mr. Bonsell?

23 A. Yes.

24 Q. What do you recall about his statement?

25 A. I remember him standing up and at first saying something

00164

1 to the effect that everyone who is speaking against the  
2 Board are people who have left the Board. And again, I  
3 think he was reminded to stick to the topic of hiring  
4 the Thomas More Law Center. And he said I am sorry, I  
5 will stick to the topic.

6 He just basically said he thought that the Board  
7 was being courageous. He said to the Board God bless  
8 you, and he said it's time and that the people behind  
9 you -- there are people behind you in the community.

10 Q. Is that a reference to Don Bonsell?

11 A. Yes.

12 Q. We are through December. Now January is coming up. Did  
13 you have an expectation, Jen, as to when you would be  
14 reading the statement set forth in the press release?

15 A. At the beginning of our Evolution unit, yes.

16 Q. Was that based on the discussion you had at the  
17 November 24th meeting; was that worked out or fleshed  
18 out?

19 A. I believe so, yes.

20 MR. GILLEN: I am almost done. Can we take a  
21 short break?

22 MS. PENNY: Sure.

23 A. Sure.

24 (A recess was taken.)

25

00165

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2

AFTER RECESS

3 BY MR. GILLEN:

4 Q. Okay, Jen, let's wrap this up here. A statement has  
5 been worked out -- there is some expectation that you  
6 are going to read the statement. You said you are going  
7 to read that statement in January is when it came up?

8 A. That is when Evolution would have started, yes.

9 Q. What was it mid January, January 15th?

10 A. Sounds about right, yes.

11 Q. Between the period we just got done with the  
12 December 1st Board minutes and January 15th, did you  
13 have any discussions with any members of the Board about  
14 the curriculum change, its purpose or so on?

15 A. We were called to a meeting in December, December 16th  
16 with Alan Bonsell because he was upset with some -- a  
17 teacher comments, staff comments that appeared in some  
18 of the newspapers after the District press release.

19 Q. Just tell me briefly was any other Board member present?

20 A. No.

21 Q. What was said at that meeting?

22 A. Let's see if I have notes.

23 Q. Do you have notes on that, Jen?

24 A. Yes, it is -- let me not mix things up. It is in  
25 Exhibit 5.

00166

- 1 Q. Thank you.
- 2 A. It would be about the third page back.
- 3 Q. Got you.
- 4 A. And again, there was some discussion of --
- 5 Q. Looks like you were looking for some guidance?
- 6 A. Yes. I went with questions, yes, of how this was going  
7 to be handled. What can I discuss, what can't I  
8 discuss, who is handing out the books.
- 9 I know I had a question with the no origins of  
10 life being taught. I do current events in my class. I  
11 had a student bring in there was a new human fossil  
12 found. Is it okay to talk about that kind of thing if a  
13 student brings it in as a current event?
- 14 If no origins of life are to be taught, does that  
15 constitute origins of life? That kind of thing.
- 16 Q. Do you recall receiving a response subsequently?
- 17 A. Yes. We got -- Mr. Baksa gave us a current event  
18 policy, a Board policy on current events.
- 19 Q. There is a reference in this page of notes which has a  
20 date 12/16/04 in the bottom right-hand corner just above  
21 a notation my questions at the meeting with Baksa and  
22 Bonsell.
- 23 There is a notation there to Intelligent Design,  
24 not a theory. What was that getting at, Jen?
- 25 A. I think we reiterated with that we didn't believe

00167

- 1 Intelligent Design was a scientific theory.
- 2 Q. Was that for the reason you stated earlier about  
3 testability?
- 4 A. Yes.
- 5 Q. The majority of Board voted Intelligent Design. What  
6 does that reflect?
- 7 A. Just that there was a majority -- I don't know who said  
8 or if I said it, or someone said it that the majority of  
9 the Board did vote for Intelligent Design. I don't  
10 remember specifically.
- 11 Q. Did you go to the Board with these statements already  
12 jotted down, or are they --
- 13 A. I think that I was thinking of these questions. I went  
14 to the meeting with these in hand, yes.
- 15 Q. You think the asterisk that points to the top of the  
16 page were the points you brought in and the notations  
17 below were the notations you added?
- 18 A. Yes.
- 19 Q. Flip the page over. There's some statements there we  
20 cooperated up to the point, and it goes on. Did you  
21 make those statements at the meeting, Jen?
- 22 A. Again, I am a writer so I think that these were my  
23 thoughts that I had written down. Prior to the meeting,  
24 when I get upset, I tend to write things down, and it  
25 makes me feel better if I get them down on paper.

00168

1                   So I think that these were just sort of my  
2 statements that I had written for myself. I may have  
3 said some of them at the meeting.

4 Q. Let me ask you just take a look at them real quick.

5 A. Okay.

6 Q. Do you recall making any of those statements at the  
7 meeting?

8 A. I do remember saying -- Mr. Bonsell was saying he was  
9 confused by some of the statements in the press because  
10 we were coming out against the Board, and he thought  
11 that we had been cooperating all along.

12                   And I do remember saying that you're right, we  
13 cooperated up until the point that you added Intelligent  
14 Design into the curriculum. And then, you know, we  
15 didn't agree with that. Our cooperation at that point  
16 stopped. So I do remember saying that.

17                   I know that it was told at that meeting that we  
18 don't think the words Intelligent Design should be in  
19 our curriculum.

20 Q. There's some comments here that Intelligent Design  
21 doesn't belong in a science classroom. Did you express  
22 that thought during the meeting?

23 A. I don't remember specifically, but again, it had been  
24 relayed that we didn't think it was a science.

25 Q. Do you recall Mr. Bonsell responding to any of your

00169

1 observations?

2 A. The one thing I remember at the end of that meeting is  
3 that there was a suggestion that there were so many  
4 people talking to the press, that maybe we all make some  
5 sort of community statement, the Board, the  
6 administration, the staff to the press. But I think in  
7 the end, we decided against that statement.

8 I remember in that meeting, again, there was the  
9 question of did we cooperate, did we develop the  
10 statement. And I remember him directing -- asking me  
11 specifically didn't you change parts of this.

12 And again, we explained the position that we  
13 changed it for the science. Other than that, I don't.

14 Q. Do you recall anything else? Any exchanges between  
15 Mr. Bonsell and your colleagues?

16 A. No. I don't -- I don't remember in particular. No, not  
17 anything specific.

18 Q. Okay. Was there administration present?

19 A. Yes. Mr. Baksa was there.

20 Q. Any exchanges between the science faculty and Mr. Baksa  
21 bearing on the curriculum change or the statement?

22 A. I am sure we discussed things, but I don't remember in  
23 particular.

24 Q. There's a notion in here that Intelligent Design has  
25 religious content. Is anyone bringing up the idea that

00170

- 1 you are doing this to teach religion?
- 2 A. I don't believe at this meeting, no. I mean at those  
3 previous meetings where I said that Mrs. Spahr had  
4 brought her court cases. I think that was brought up  
5 then. But probably not any more at this point.
- 6 Q. When Mrs. Spahr is bringing up these court cases and she  
7 sees it as Intelligent Design, as Creationism, is she  
8 sort of telling -- attributing to the Board the purpose  
9 of teaching religion? Is that the way she sees it, or  
10 does she think that the theory is a religious theory  
11 whether they know it or not?
- 12 A. I would say more so the second one.
- 13 Q. She sees it as religious theory, and she is trying to  
14 make that clear to them?
- 15 A. Yes.
- 16 Q. You said this before, but I just want to make sure I  
17 understand you. Did you get the sense that they thought  
18 it was a scientific theory?
- 19 A. Early on, I would say that I don't think that topic came  
20 up a whole lot. Probably by this point, they were  
21 saying it was a science, yes.
- 22 Q. Apart from this meeting with Mr. Bonsell, did you have  
23 any other conversations with any Board members in  
24 December or January of -- December of 2004, January of  
25 2005 about the curriculum change?

00171

- 1 A. I don't believe so.
- 2 Q. Now how about with the administration, any other  
3 discussions with the administration?
- 4 A. Up until this December, is that what you are asking?
- 5 Q. We have pretty much covered up to December 1st. And  
6 from December 1st forward through January 2005, any  
7 other discussions with the administration that stick  
8 out?
- 9 A. Here in our timeline, we have a January 5th meeting with  
10 Mr. Baksa to discuss the distribution of excusal forms  
11 and parents letters that were to go out to students.
- 12 Q. Let me ask you is the remainder of the story, at least  
13 in the short term through January 2005 as you see it,  
14 does it turn around the reading of the statement and the  
15 position that you took eventually?
- 16 A. Yes.
- 17 Q. And I understand that eventually, the science faculty  
18 decided they didn't want to read that statement?
- 19 A. Yes.
- 20 Q. Give me your reasons briefly.
- 21 A. Again, we had -- as I said, Bill Miller had said at  
22 several of the meetings that we would like nothing to do  
23 with this. We were meeting, and I remember the January  
24 5th meeting, that there was a possibility at that point  
25 that we were discussing the excusal forms. I remember

00172

1 it being said this could all blow over because the  
2 plaintiffs could file a TRO against this whole thing,  
3 and we wouldn't have to worry about reading it or  
4 anything.

5 And then I believe it was the next day we were  
6 told -- there should be an e-mail somewhere from Mr.  
7 Baksa that said they were not filing a TRO. So at that  
8 point, we decided that we needed to stand up and say  
9 since this wasn't going to be taken away by the TRO,  
10 that we needed to stand up and say we didn't want to  
11 read this.

12 Q. All right. Let's look at Exhibit 6, Jen, please.

13 A. (Witness complies.)

14 Q. Three pages in, first entry at the top is dated April 6,  
15 2005.

16 A. How many pages is it?

17 Q. Three pages in.

18 A. The stapled packet, okay.

19 Q. The notation at the top, Eric -- I take it that is my  
20 colleague and friend as a result of this litigation Eric  
21 Rothschild -- called Rob -- Is that Rob Eshbach?

22 A. Yes.

23 Q. -- at school while we were at lunch to ask about the  
24 memo from Dr. Peterman?

25 A. Yes.

00173

1 Q. Is that the April 1, 2003 memo we looked at earlier?

2 A. Yes.

3 Q. Did you have any discussion with Mr. Eshbach about that  
4 memo?

5 A. I remember once it was faxed -- I don't believe at that  
6 point. But once it was faxed, I think that we had a  
7 discussion of do we remember this memo, do we remember  
8 seeing this memo.

9 I remember helping Mrs. Spahr look through all of  
10 her paperwork to see if she had a copy of the memo.

11 Q. Did Mr. Eshbach say anything to you about the memo?

12 A. When we were discussing it, he said that he remembers  
13 seeing that memo because he was working after school  
14 late one evening, and Dr. Peterman came -- I believe he  
15 assumed looking for Mrs. Spahr. She wasn't there so she  
16 stopped and talked to him and sort of showed him that  
17 memo.

18 He didn't remember it word for word, but he  
19 remembered at one point it had points, and he remembered  
20 seeing those points.

21 Q. If we jump down to 4/8/05, it says Eric called to speak  
22 about the accuracy of the memo. Did he speak with you?

23 A. No.

24 Q. Who did he speak with?

25 A. Mrs. Spahr.

00174

- 1 Q. Did Mrs. Spahr tell you what she told Eric?  
2 A. Other than what is here, no.  
3 Q. By what is here, do you mean the points listed under the  
4 entry for 4/9?  
5 A. Yes.  
6 Q. Let me ask you about that. Eric called. Did he call  
7 you?  
8 A. No.  
9 Q. He was speaking with Mrs. Spahr?  
10 A. Yes.  
11 Q. These notes here, the numbered points underneath the  
12 entries for April 9, 2005, the first one says asked if  
13 the information was accurate. I responded yes.  
14 Is that what Bert told you?  
15 A. Yes.  
16 Q. Asked if mentioning Creationism and if giving it  
17 50 percent was accurate. I responded or equal time was  
18 probably correct.  
19 Did Bert tell you that?  
20 A. Yes. She didn't know if she remembered it as exactly  
21 50 percent Creationism, 50 percent Evolution, but she  
22 remembered it more like equal time was given to  
23 Creationism and Evolution.  
24 Q. Number three, what does that mean to you, Jen?  
25 A. She said that -- and I'll quote -- and you will probably

00175

- 1 hear this tomorrow several times -- in my calmest  
2 Sicilian tone, I looked at him and asked which Board  
3 member was asking for this, and he responded Alan  
4 Bonsell.
- 5 Q. There is a notation indicating that Mr. Buckingham was  
6 deposed again. Did Bert Spahr tell you anything about  
7 any discussion with Mr. Rothschild about the deposition  
8 of Mr. Buckingham?
- 9 A. No.
- 10 Q. Part of the way through this pack labeled number six,  
11 there is an e-mail dated 3/28/05 to Bert Spahr from  
12 Robert Hamilton. Did you know Mr. Hamilton?
- 13 A. Yes.
- 14 Q. Did Mr. Hamilton ever mention the Creationism  
15 controversy to you?
- 16 A. Not to me, no, I don't believe.
- 17 Q. Do you have any information concerning Mr. Hamilton's  
18 relating a controversy concerning Creationism to any  
19 person at Dover Area School District?
- 20 A. Bert - I mean I am assuming he had talked with Bertha  
21 because Bertha was aware of this. So other than that --
- 22 Q. When you say this, do you mean this incident that  
23 appears to be recounted in this e-mail?
- 24 A. Yes.
- 25 Q. Did Bert tell you anything about it?

00176

- 1 A. Originally or after this?  
2 Q. At any time.  
3 A. I don't believe, no, that I heard anything about it  
4 until we were getting documents together, and I might  
5 have seen this e-mail, that we discussed this.  
6 Q. Did she ever explain what this might refer to?  
7 A. I can't remember if this is coming from Bertha or Rob or  
8 who it was. I don't remember if it was directly from  
9 Mr. Hamilton.  
10 I had subsequently seen Mr. Hamilton at actually  
11 several funerals that he talked to me. And he had said  
12 -- I remember him, the one quote -- and again, I don't  
13 know if this is directly from him or Bertha -- that  
14 someone had come to him -- and at that point, I have no  
15 idea who that someone was -- asking about the inclusion  
16 of Creationism in the biology classroom.  
17 And his quote was as soon as you teach Evolution  
18 in your Sunday schools, we will teach Creationism in the  
19 biology classroom. Mr. Hamilton, I took over for him.  
20 He was also a biology teacher before he became  
21 Principal. This would have been very near and dear to  
22 him.  
23 Q. Did he tell you who made that inquiry of him?  
24 A. No.  
25 Q. Did he indicate whether it was a member of the Dover

00177

- 1 Area School District School Board?
- 2 A. No. We had assumed it was, but I couldn't tell you that  
3 for sure.
- 4 Q. Do you have reason to believe that Mr. Eshbach spoke  
5 with Mr. Hamilton about this incident referenced in the  
6 March 28th e-mail?
- 7 A. As I said, I don't remember who told me. I can't  
8 remember if it was Bertha or if it was Rob Eshbach that  
9 told me his quote.
- 10 Q. You say you spoke with him a few times. Did he  
11 elaborate on this --
- 12 A. No.
- 13 Q. -- incident?
- 14 A. Not on this issue.
- 15 Q. At the back of this packet, there's some notes, Jen.  
16 When I look at the notes, it looks like they are notes  
17 from the forum in Elizabethtown?
- 18 A. Yes.
- 19 Q. Did you attend that forum?
- 20 A. Yes.
- 21 Q. After having attended that forum, do you still think  
22 Intelligent Design is not science?
- 23 A. Yes.
- 24 Q. Why is that?
- 25 A. Again, as I said before because there is no test that

00178

- 1 you can do that proves that an intelligent being,  
2 designer, whatever you want to call it is responsible  
3 for the things that we see here on earth.
- 4 Q. Have you ever spoken with Kenneth Miller?  
5 A. Through e-mails just very briefly. I think I e-mailed  
6 him about new editions of the textbook at one point.  
7 That was probably our original order, what was the  
8 latest edition, is there a new edition coming out soon.  
9 He e-mailed us to show support. If he would  
10 like -- if we would like him to come to speak to us on  
11 this issue, he would, or offer any guidance, any  
12 symposium type things, the same as Dr. Behe presented  
13 here.
- 14 Q. At the back of this packet numbered Miller 6, there's  
15 Answers to Interrogatories?  
16 A. Yes.  
17 Q. Where did they come from?  
18 A. That was the subpoena I guess that we got from Thomas  
19 More Law Center handed to us in January. And there were  
20 questions that we were told to answer -- or to be  
21 prepared to answer. So I typed them up, again my way of  
22 writing everything down.  
23 Q. Were they Interrogatories?  
24 A. Yes.  
25 Q. Served on the District?

00179

- 1 A. Yes, it was.  
2 Q. Was the administration collecting information to respond  
3 to interrogatories?  
4 A. We were given the piece of paper and told to collect  
5 information, documents, and that these were the  
6 questions we were told to answer.  
7 Q. Were they written questions?  
8 A. Yes.  
9 Q. Is this information that you prepared?  
10 A. Yes, just me.  
11 Q. Did the other members of the science faculty prepare  
12 answers?  
13 A. I am not sure. This was just mine. We were told not to  
14 discuss with each other, to answer them on your own.  
15 This was just me.  
16 Q. At the beginning of this deposition, we noted that you  
17 had talked with some attorneys representing the  
18 plaintiffs in this matter?  
19 A. Yes.  
20 Q. We have had a pretty extensive discussion of some of the  
21 events here today. Is there anything that you told  
22 those lawyers for the plaintiffs that I haven't  
23 discussed with you?  
24 A. No.  
25 MR. GILLEN: I have no further questions.

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MR. LOWE: I just have a couple. No, I am joking.  
MR. GILLEN: Thanks, Jen.  
(The deposition was concluded at 4:50 p.m.)

00181

1 COMMONWEALTH OF PENNSYLVANIA :  
2 :  
3 COUNTY OF CUMBERLAND :  
4 I, Vicki L. Fox, Reporter and Notary Public in and  
5 for the Commonwealth of Pennsylvania and County of  
6 Cumberland, do hereby certify that the foregoing  
7 testimony was taken before me at the time and place  
8 hereinbefore set forth, and that it is the testimony of:  
9 JENNIFER MILLER  
10 I further certify that said witness was by me duly  
11 sworn to testify the whole and complete truth in said  
12 cause; that the testimony then given was reported by me  
13 stenographically, and subsequently transcribed under my  
14 direction and supervision; and that the foregoing is a  
15 full, true and correct transcript of my original  
16 shorthand notes.  
17 I further certify that I am not counsel for nor  
18 related to any of the parties to the foregoing cause,  
19 nor employed by them or their attorneys, and am not  
20 interested in the subject matter or outcome thereof.  
21 Dated at Camp Hill, Pennsylvania, this 24th day of  
22 May, 2005.  
23  
24 \_\_\_\_\_  
25 Vicki L. Fox  
Reporter - Notary Public

