

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

TAMMY KITZMILLER, et al :
 : CASE NO.
 v. : 4:04-CR-002688
 :
 DOVER AREA SCHOOL DISTRICT, :
 et al :

TRANSCRIPT OF PROCEEDINGS
BENCH TRIAL

AFTERNOON SESSION

BEFORE: HON. JOHN E. JONES, III

DATE : September 29, 2005
1:35 p.m.

PLACE : Courtroom No. 2, 9th Floor
Federal Building
Harrisburg, Pennsylvania

BY : Wendy C. Yinger, RPR
U.S. Official Court Reporter

APPEARANCES:

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I N D E X T O W I T N E S S E S

<u>FOR THE PLAINTIFFS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Carol Brown				
By Mr. Rothschild			34	
By Mr. Gillen		3		40
Jeffrey Brown				
By Mr. Harvey	47		100	
By Mr. Gillen		81		--
Frederick Callahan				
By Mr. Harvey	103			
By Mr. Muise		116		

1 THE COURT: All right. Now, Mr. Gillen,
2 cross-examine.

3 MR. GILLEN: Thank you, Your Honor.

4 **CROSS EXAMINATION**

5 BY MR. GILLEN:

6 Q. Good afternoon, Ms. Brown.

7 A. Good afternoon, Mr. Gillen.

8 Q. Pat Gillen for the Defendants.

9 A. I remember, sir.

10 Q. Thank you very much. I'm going to ask you a few
11 questions about your testimony here in court today.
12 Towards the closing portion of your testimony, you
13 testified that two members of the board had asked you if
14 you were born again, is that correct?

15 A. Actually, there were three, but two within the
16 past -- the last year I served on the board.

17 Q. Who were they?

18 A. The two who asked me within the last year of my
19 tenure? Mr. William Buckingham and Mrs. Jane Cleaver.

20 Q. And those are the two you referenced in your
21 departing speech from the board, correct?

22 A. Yes, they were.

23 Q. I want to ask you a few questions about that.
24 You testified today that the people on the board were
25 your friends, correct?

1 A. They had been my friends.

2 Q. Okay. Now the conversation with Jane Cleaver,
3 isn't it true that, that took place in her home?

4 A. Yes, it did, sir.

5 Q. And you had come over to her house to speak with
6 her because she was a new board member, correct?

7 A. Yes.

8 Q. You invited the conversation, didn't you, Mrs.
9 Brown?

10 A. I most certainly did. I so indicated in my
11 deposition, sir.

12 Q. That's right, that's right. And I want to place
13 that statement in context today. In fact, you went to
14 her home, and you saw a beautiful carving of the Lord's
15 Supper, correct?

16 A. The Lord's Last Supper, yes, sir.

17 Q. You began to talk to Mrs. Cleaver about religion,
18 didn't you?

19 A. No, I did not speak to her directly about
20 religion. What I spoke to her about was my liking for
21 the carving. I had never seen such a beautiful carving.
22 And I did make reference to the fact it was of the
23 Lord's Last Supper. And the conversation segued from
24 there.

25 Q. You concede that conversation about the art is

1 not about a religious object?

2 A. It most certainly is within that context.

3 Q. Okay. And it was in that context that Mrs.
4 Cleaver discussed her religious convictions, correct?

5 A. Yes, it began with her discussion of a trip, I
6 believe, that she and her late husband had made to the
7 Holy Land, sir.

8 Q. And it was during that discussion of her
9 religious convictions that she asked you?

10 A. Yes, she did, sir.

11 Q. So your friend asked you about your religious
12 convictions in her home, correct?

13 A. Yes, she did, sir.

14 Q. And that conversation was not for business,
15 correct?

16 A. Yes, it was, in one sense, sir.

17 MR. GILLEN: Well, Your Honor, may I
18 approach the witness?

19 THE COURT: You may.

20 MR. GILLEN: Thank you.

21 BY MR. GILLEN:

22 Q. Mrs. Brown, I'm giving you a copy of your
23 deposition.

24 A. Oh, thank you. I can read it. Thank you.

25 Q. Yeah, I have the full pages, and I truly regret

1 any inconvenience.

2 A. That's all right.

3 Q. If I could have, I would have adjusted --

4 A. What did you wish me to look at, sir?

5 Q. I would ask you to look at page 67 of your
6 deposition testimony, Mrs. Brown.

7 A. What portion of the page, sir?

8 Q. I would ask you to begin looking at the page on
9 line 13. I will read the question that I asked you
10 during your deposition. Let me see, if you have this
11 discussion with Mrs. Cleaver, and you say, it was kind
12 of a -- just an exchange between the two of you? Would
13 you read your answer, Mrs. Brown?

14 A. I said, beyond the school board business, yes.

15 Q. So the discussion was beyond the school board
16 business, correct, Mrs. Brown?

17 A. Yes, but it was within the framework of school
18 board business that I was at her home, sir.

19 Q. But you told me that it was beyond the school
20 board business, correct?

21 A. It was beyond the scope of what I was there for,
22 yes, sir.

23 Q. Okay. Now you've also testified that Mr.
24 Buckingham once asked you if you were born again,
25 correct?

1 A. Yes, sir.

2 Q. I'd like to place that comment in context as
3 well. Now you said Mr. Buckingham was your friend today
4 in court, is that correct?

5 A. That is correct, sir.

6 Q. I would ask you to turn to page 86 of your
7 deposition, Mrs. Brown. And if you would, just -- don't
8 worry. If you would, just take a moment and look over
9 from pages 86 through 88.

10 A. Yes, we were referencing a policy committee
11 meeting.

12 Q. Now if I'm not mistaken, Mrs. Brown, in your
13 deposition, you testified that you did have a discussion
14 with Mr. Buckingham on one occasion where he was kind
15 enough to offer you a ride home from the school board
16 meeting, correct?

17 A. From the policy committee meeting. He was a
18 member of the policy committee, sir.

19 Q. Okay. And while he's giving you a ride home, he
20 did ask you about your religious convictions, correct?

21 A. Yes, he did.

22 Q. And that is the occasion in which Mr. Buckingham
23 asked you if you had been born again, correct?

24 A. Yes, that is correct.

25 Q. So Mr. Buckingham, who you've testified is your

1 friend, is kind enough to drive you home from a board
2 meeting. You're having some discussions about the
3 current state of culture and morality?

4 A. Yes, sir.

5 Q. And he asked you about your religious
6 convictions, correct, Mrs. Brown?

7 A. That is correct, sir.

8 Q. So on the day that you resigned from the board,
9 and you read your speech, and you said two people asked
10 you if you were born again?

11 A. Yes.

12 Q. And you thought that was inappropriate, correct?

13 A. Yes, I did, and I still do, sir.

14 Q. You think it's inappropriate for a friend to ask
15 you about your religion?

16 A. Yes, I do.

17 Q. Okay. You don't ask anyone about religion?

18 A. No, I do not, sir.

19 Q. Is religion something that shouldn't be discussed
20 at all?

21 A. I would not presume to discuss religion under
22 normal circumstances except within my own family, sir.

23 Q. Did you ever tell Mrs. Cleaver that you were
24 offended?

25 A. No, I did not, sir.

1 Q. Did you ever tell Mr. Buckingham that you were
2 offended by his question to you while he was taking you
3 home?

4 A. I did say to him, I don't think we should be
5 discussing this. But, no, sir, I did not tell him I was
6 offended.

7 Q. Mrs. Brown, I believe you testified that you came
8 on the board, and you were elected president, correct?

9 A. That was during my third term, yes -- beginning.

10 Q. I'm sorry. Go ahead.

11 A. It was at the beginning of my third term, yes,
12 sir.

13 Q. Okay. Now I believe you said, subsequently, Mr.
14 Bonsell became president, correct?

15 A. Yes, two years later, sir.

16 Q. Then you were nominated for vice president,
17 correct?

18 A. Yes, I was.

19 Q. But you were not elected?

20 A. No, I was not.

21 Q. Isn't it true, Mrs. Brown, that from that day
22 forward, you didn't get along with the board?

23 A. No, it is not true, sir.

24 Q. Isn't it true that from that day forward, you had
25 recriminations for your fellow board members?

1 A. No, sir, that is not true. Were that the case,
2 sir, I would have resigned immediately after that
3 election.

4 Q. Let's talk about your participation in the board,
5 please. I believe that you said that you ran for the
6 board, along with some of these people who are currently
7 on it; Mr. Bonsell, correct?

8 A. Yes, sir.

9 Q. All right. You ran for the board with him,
10 correct?

11 A. That is true, sir.

12 Q. And your platform was one of fiscal
13 responsibility, correct?

14 A. Fiscal responsibility, academic accountability,
15 among other things, sir.

16 Q. You had also worked with his father, Don Bonsell,
17 correct?

18 A. Yes, I did, sir.

19 Q. Both of you and Don Bonsell shared a concern for
20 fiscal responsibility while you shared terms on the
21 school board, correct?

22 A. Yes, sir.

23 Q. Later you ran with Sheila Harkins, correct?

24 A. Yes. But I must correct, you sir. I did not run
25 with Mr. Bonsell, Sr.

1 Q. No, no, correct. I didn't mean to create that
2 impression. You ran with Alan Bonsell, correct?

3 A. Yes, sir.

4 Q. And Sheila Harkins?

5 A. And Angie Zeigler Yingling, sir.

6 Q. So that's a yes to Sheila Harkins?

7 A. Yes, sir.

8 Q. You didn't run on a religious platform, did you?

9 A. Most certainly not, sir.

10 Q. Now when you were first elected president of the
11 board, it was a contentious proceeding, wasn't it?

12 A. Yes, it was.

13 Q. In fact, Barrie Callahan and two other board
14 members stepped out, isn't that true?

15 A. That is true.

16 Q. They refused to come in until you had been
17 selected president?

18 A. Very true.

19 Q. And some of the people who selected you president
20 were Alan Bonsell, Sheila Harkins, and Angie Yingling,
21 correct?

22 A. Yes, sir.

23 Q. You've referenced a contentious board meeting
24 that had to do with the pledge of allegiance, correct?

25 A. Yes, sir.

1 Q. And during that -- the issue in that meeting was
2 whether or not the board should pass a resolution in
3 favor of keeping under God in the pledge, correct?

4 A. To pass a resolution to send a letter of support
5 to the Supreme Court.

6 Q. Support for what?

7 A. To keep under God in the pledge of allegiance,
8 sir.

9 Q. Thank you, Mrs. Brown. And you read an address
10 at that meeting, didn't you?

11 A. I did, sir.

12 Q. And that address mentioned the founding fathers,
13 correct?

14 A. It did, sir.

15 Q. Is there anything wrong with Mr. Bonsell's
16 references to the founding fathers?

17 A. No, sir.

18 Q. You voted in favor of the resolution keeping
19 under God, supporting keeping under God in the pledge?

20 A. Yes, I did. As I stated in my deposition with
21 you, it is one of two votes that I deeply regret.

22 Q. Let's look at the biology text issue here. The
23 text was not purchased in 2003, correct?

24 A. No, sir, it was not.

25 Q. And that was because of fiscal concerns, correct?

1 A. Yes, it was.

2 Q. In fact, there was discussions that the teachers
3 weren't using the book that they had at present?

4 A. Yes. It did not match the academic standards put
5 forth in Chapter 4 from the State Department of
6 Education, sir.

7 Q. So there was a discussion that the teachers
8 weren't using the book that they presently had, correct?

9 A. Yes, because it did not fit the new science
10 standards, sir.

11 Q. They weren't using it, Mrs. Brown?

12 A. That's correct, sir.

13 Q. Barrie Callahan wanted to buy the books?

14 A. Yes, she did.

15 Q. You saw that Barrie Callahan is pretty much a
16 spender, didn't you?

17 A. Yes, more so than I was, sir.

18 Q. And that was her general attitude toward school
19 board budget matters, correct?

20 A. Yes, sir.

21 Q. So you differed with Mrs. Callahan on that issue?

22 A. Yes, I did.

23 Q. In 2003, Mrs. Callahan was joined by other board
24 members, Larry Snook and Lonnie Langione, in criticizing
25 the board, correct?

1 A. Yes.

2 Q. You believed that they were politically
3 motivated, correct?

4 A. At one point in time, I did, sir.

5 Q. In fact, you've testified that you say, when the
6 three of them came up to the podium, you shut your ears?

7 A. Very often, I did, sir.

8 Q. You've testified to meetings with the teachers
9 about the selection of the text, correct?

10 A. Yes, sir.

11 Q. At those meetings, other texts, including
12 consumer sciences, were also at issue?

13 A. Yes, sir, I believe there were three texts.

14 Q. And Bill Buckingham has head of the curriculum
15 committee in 2004 when these discussions took place?

16 A. Yes, he was, sir.

17 Q. Now Mr. Buckingham was in a new position because
18 he hadn't been on the board curriculum committee before,
19 sir?

20 A. He had been appointed to the board, sir.

21 Q. Board curriculum committee?

22 A. He had been appointed to the board itself prior
23 to running for election, sir.

24 Q. I didn't ask you about that, Mrs. Brown. I just
25 asked you --

1 A. I misunderstood, sir.

2 Q. Okay. Then forgive me if my question was
3 imprecise. I asked you if this was the first time Mr.
4 Buckingham had served on the curriculum committee,
5 correct?

6 A. In 2003, yes, sir.

7 Q. In 2004, he was the head of the committee?

8 A. Yes.

9 Q. He was in a new position?

10 A. Yes, sir. And I believe my answer was imprecise.
11 The end of 2003 or the very beginning of 2004 when the
12 president made the committee selections. My apologies.

13 Q. I appreciate that accuracy. And he said at that
14 meeting, he didn't have a chance to review the text?

15 A. To which meeting are you referring, sir?

16 Q. The meeting of the board curriculum committee on
17 -- in June of 2004?

18 A. I believe it was prior to that, sir. I may be
19 incorrect. But he did indicate his unfamiliarity with
20 the text.

21 Q. And this is the meeting at which the teachers
22 gave their recommendation of the Miller Levine text?

23 A. Are we referring to a board meeting, sir, or a
24 curriculum meeting?

25 Q. The board curriculum committee meeting and the

1 teachers are discussing the pros and cons of the Miller
2 and Levine text. Do you recall that discussion?

3 A. Among others, yes.

4 Q. Now when Mr. Buckingham said that, there was
5 subsequently a board meeting in June, the first meeting
6 in June?

7 A. Yes, sir.

8 Q. And Mr. Buckingham indicated that he couldn't
9 bring the book up to a vote because he hadn't had a
10 chance to review it?

11 A. Yes, sir.

12 Q. And Barrie Callahan was in the public comment
13 section or the seating for the public?

14 A. Yes, sir.

15 Q. And she voiced objections, correct?

16 A. She brought it up at the public comment section
17 at the beginning of the meeting, sir.

18 Q. So did Larry Snook, correct?

19 A. Yes, sir.

20 Q. Now you've testified about a meeting in which Mr.
21 Buckingham made a, what should I say, as you testify, an
22 unkind comment to your husband, correct?

23 A. Yes.

24 Q. And you've said at that point, you felt like
25 hitting him, didn't you?

1 A. Yes, I did. I said that in my deposition.

2 Q. And during these discussions in June, it was
3 evident to you that Mr. Bonsell was interested in
4 intelligent design, correct?

5 A. That was not the term that was used, sir.

6 Q. Mrs. Callahan, I ask you to look at your
7 deposition.

8 A. I beg your pardon?

9 Q. If you look at your deposition, on page 144 --

10 THE COURT: I think you have the wrong name.
11 I beg your pardon.

12 MR. GILLEN: Forgive me, Mrs. Brown. 144.
13 Thanks, Judge.

14 THE COURT: You've been so polite to each
15 other, I thought I'd help things along.

16 MR. GILLEN: It's been a long week. It's
17 been a long week, and it's only Thursday, Judge.

18 THE COURT: Right.

19 THE WITNESS: Which portion of the page,
20 sir?

21 BY MR. GILLEN:

22 Q. I want to make sure I give you enough to look at
23 so you've got some context. If you look at 143, and
24 take a quick look over that, you'll see it's in
25 reference to the June meeting?

1 A. I'm sorry. I thought you said 144.

2 Q. I did, but upon reflection, if you would start at
3 143, it will give you the date I'm talking about, that's
4 June 2004?

5 A. Yes, sir.

6 Q. And if you would read over onto page 144. I
7 direct your attention to line 6?

8 A. On which page, sir?

9 Q. 144.

10 A. My response to Mr. Bonsell's reference point?

11 Q. Yes.

12 A. Yes, sir.

13 Q. The question I asked you at that time was, Do you
14 remember Mr. Bonsell saying anything at these June 2004
15 meetings? If you would, Mrs. Brown, if you'd read your
16 answer beginning on page 6 -- or line 6 at page 144?

17 A. Mr. Bonsell's reference point, I believe, was
18 intelligent design. I may be in error. I believe from
19 what I heard that Mr. Bonsell favored giving the two
20 viewpoints of intelligent design and, as they termed it,
21 Darwinism. Do you wish me to continue, sir?

22 Q. No, thank you. Now after that, there was another
23 meeting between the board curriculum committee and the
24 teachers, correct?

25 A. Yes, sir.

1 Q. And at that time, the teachers expressed that
2 they taught evolution, as you said this morning, with a
3 small e?

4 A. Yes, sir.

5 Q. And you understood that to mean, teachers focused
6 on adaptations more of the animal and plant world,
7 correct?

8 A. Yes, sir, Darwin's theory of natural selection,
9 sir.

10 Q. And they told Bill that in 20 odd years of
11 experience, they had perhaps half a dozen questions
12 about origins?

13 A. That is correct, sir.

14 Q. And all the teachers were very clear that they
15 did not teach the origin of life?

16 A. Yes, sir.

17 Q. Teachers said it was their custom to tell
18 students who asked questions about that to talk to their
19 parents, their family, their pastors, correct?

20 A. That is correct, sir.

21 Q. Bert Spahr indicated at that meeting, as you have
22 today, that the text didn't jive with state standards,
23 correct?

24 A. The text we had at that time, sir. Yes, sir.

25 Q. Now at the conclusion of this meeting, Mr.

1 Buckingham indicated that he could deal with that,
2 correct?

3 A. Yes, he did.

4 Q. And you believed that the text would be
5 purchased, correct?

6 A. I did indeed, sir.

7 Q. And the text was purchased, Mrs. Brown, correct?

8 A. Eventually, sir, it was.

9 Q. Around this time, you heard of a supplemental
10 text that was under consideration, Of Pandas and People,
11 correct?

12 A. Approximately one month later, sir.

13 Q. That would be July?

14 A. The latter part of July, sir.

15 Q. That's your recollection?

16 A. To the best of my recollection.

17 Q. And it was your understanding that Mr. Buckingham
18 wanted the text Of Pandas used side-by-side with the
19 biology text recommended by the teachers, correct?

20 A. Yes, it was.

21 Q. And when you heard of Of Pandas, you picked up a
22 copy -- let me ask you this. Mike Baksa called you and
23 told you that Of Pandas was being discussed among the
24 board curriculum committee, correct?

25 A. I believe that's correct.

1 Q. And you went down and picked up a copy and took a
2 look at it, correct?

3 A. No, I did not. My husband picked up a copy from
4 Mrs. Harkins.

5 Q. Oh, okay. Good enough. So you got a copy, and
6 you and your husband looked it over, correct?

7 A. We read it.

8 Q. And as you noted, it didn't contain any reference
9 to God, correct?

10 A. No, it did not, sir.

11 Q. Or creationism?

12 A. No, sir, it did not.

13 Q. Or a literal interpretation of the Bible?

14 A. No, sir, it did not.

15 Q. But you did see it as giving a supernatural
16 explanation, correct?

17 A. Yes, I did, sir.

18 Q. Now the next meeting was in August 2004, correct?

19 A. Yes, sir.

20 Q. And you testified today that, in your opinion,
21 the text that were flashed up here on the screen was
22 being considered for purchase, is that correct?

23 A. I'm sorry, sir. I don't understand.

24 Q. Well -- and I'm trying to understand your
25 testimony today here, Mrs. Brown. Documents were

1 flashed on the screen with your handwritten notation,
2 August 27th, 2004?

3 A. Yes, sir.

4 Q. And those related to biology texts, correct?

5 A. There was a reference to one text on the second
6 page, sir.

7 Q. Well, how about that first page? Wasn't that a
8 list of three base texts that were used at private
9 schools?

10 A. Non-public schools, according to that.

11 Q. So you had the first page with three texts
12 listed, correct?

13 A. Yes, sir.

14 Q. And then, as you've noted, there was a second
15 page with another text?

16 A. Yes, sir.

17 Q. Is it your testimony that people were considering
18 purchasing another textbook on August 27th, 2004?

19 A. No, sir, it is not my testimony.

20 Q. So what was discussed?

21 A. To the best of my recollection, as I said, sir, I
22 found that material by accident, and I turned it over
23 immediately. I didn't even know it still existed. In
24 trying to place it in context, looking back on my
25 calendar, I have a curriculum committee meeting list for

1 that date, which is the date at the top of the material.
2 It was clipped -- it was stapled together.

3 I remember a discussion of the text listed on the
4 front page. Mr. Baksa gave us the information. These
5 were samples of texts that were in use in neighboring
6 districts or non-public schools, to the best of my
7 recollection. I was not there for the whole meeting. I
8 do not remember any discussion of the subsequent pages.

9 It may well have occurred when I was not at the
10 meeting. But I do not remember a discussion of that
11 material, sir.

12 Q. Okay. And I want to be fair to you, but I want
13 to be clear as well. The text that was recommended by
14 the science faculty was purchased on August 2nd, 2004,
15 correct?

16 A. In the ballpark. It was approved.

17 Q. Okay. And I won't hold you to the dates. But in
18 early August, the text was purchased?

19 A. Yes.

20 Q. Okay. Now what I want to be clear on is the date
21 on that piece of paper, Mrs. Brown. The date that was
22 on that piece of paper that was flashed on the screen
23 was August 27th, 2004?

24 A. Yes, sir.

25 Q. Those documents relate to textbooks, and my

1 question to you is, is it your testimony --

2 MR. ROTHSCHILD: Objection, Your Honor. It
3 mischaracterizes the evidence.

4 MR. GILLEN: You want to flash them up on
5 the screen?

6 MR. ROTHSCHILD: If he is referring to all
7 of the documents, that's not an accurate
8 characterization of the evidence.

9 MR. GILLEN: Forgive me if I was imprecise.

10 THE COURT: I'll sustain the objection to
11 the extent that it might have been too broad. Why don't
12 you rephrase?

13 MR. ROTHSCHILD: Thank you, Your Honor.

14 MR. GILLEN: Sure.

15 BY MR. GILLEN:

16 Q. Mrs. Brown, forgive me if I was unclear. We're
17 talking about the first two documents that was flashed
18 up. The first one had the date of August 27th, 2004, on
19 it and referenced three textbooks that were being used
20 in private schools?

21 A. Yes, sir.

22 Q. You remember that document?

23 A. Yes.

24 Q. And the second was another text?

25 A. Yes.

1 Q. Is it your testimony here today that those texts
2 were discussed at the August 27th, 2004, meeting?

3 A. I have tried to be clear. To the best of my
4 knowledge, that was the day, and I extrapolated that,
5 very honestly, based on the dated material, which I
6 always date, and the fact that I had a curriculum
7 committee meeting listed for that day.

8 I believe it was a curriculum -- the curriculum
9 committee meeting where I left early. I was unable to
10 stay. So the only recollection I have of that material
11 is receiving it from Mr. Baksa and a discussion related
12 to the textbooks he had found in use.

13 I have no memory, no recollection, sir, of the
14 subsequent pages of the document. I only know that they
15 were stapled together in my file.

16 Q. So you don't know if those texts were discussed
17 on August 27th, 2004, correct?

18 MR. ROTHSCHILD: Objection, Your Honor. He
19 mischaracterized the testimony.

20 THE COURT: No, I'll overrule the objection.
21 That's appropriate cross. You can answer the question.

22 THE WITNESS: Would you repeat it, sir?

23 MR. GILLEN: Certainly.

24 BY MR. GILLEN:

25 Q. You don't know if those texts were discussed on

1 August 27th, 2004, correct?

2 A. To the best of my recollection, I believe they
3 were.

4 Q. Based on what?

5 A. Based on knowing who was using them, remembering
6 the explanation that Mr. Baksa gave for the handwritten
7 portion, the title Modern Biology from the Christian
8 School of York, based on the fact that I had dated it
9 August 27th, and when I checked my calendar to try and
10 frame the reference, sir, I found a notation that stated
11 there was a curriculum committee meeting.

12 As I have stated, sir, there were two curriculum
13 committee meetings where I was only present for part of
14 the meeting, and I believe that was one of the two.
15 That is to the best of my recollection. I have no
16 recollection of discussion relating to the second,
17 third, or fourth pages, sir.

18 Q. Did you discuss at the meeting the texts that
19 were listed on the first two pages?

20 A. Only -- my recollection is that Mr. Baksa made a
21 report simply telling us what was being used. I believe
22 the texts he referenced were also in use by some other
23 schools. That is the best of my recollection. I may be
24 in error, sir.

25 Q. Okay. Good enough. You learned about a possible

1 change in the biology curriculum in September 2004,
2 correct?

3 A. Yes, sir.

4 Q. And Mike Baksa gave you some potential language,
5 correct?

6 A. Yes, some proposed language.

7 Q. And you didn't like the language that was
8 proposed, correct?

9 A. That is correct, sir.

10 Q. And you suggested changes, correct?

11 A. I made suggestions, yes.

12 Q. And as we saw today, the language you suggested
13 referenced gaps in Darwin's theory, correct?

14 A. Yes, I did.

15 Q. And it referenced a variety of explanations for
16 the origins of life, right?

17 A. Yes, it did, sir.

18 Q. Now on the night of the October 18th, 2004,
19 meeting, the board voted on the proposed curriculum
20 change, correct?

21 A. Yes, it did, sir.

22 Q. And Angie Yingling voted for the change, didn't
23 she?

24 A. Yes, she did.

25 Q. She later told you that she was afraid that her

1 business and personal life would be affected if she
2 didn't?

3 A. Yes, sir, she did.

4 Q. You think or you've offered your opinion that
5 board members were voting on the curriculum change for
6 religious reasons, correct?

7 A. That is my opinion, sir.

8 Q. Now you know that Noel Weinrich has been someone
9 who's expressed support for creationism, correct?

10 A. That is correct, sir.

11 Q. And Sheila Harkins has made it clear that she
12 believes in evolutionary theory as a scientific theory,
13 correct?

14 A. That is correct, sir.

15 Q. Now Noel voted against the curriculum change,
16 correct?

17 A. Yes, he did.

18 Q. And Sheila voted for it, correct?

19 A. Yes, sir.

20 Q. So aren't you just speculating?

21 A. No, sir.

22 Q. Why not?

23 A. Mr. Weinrich told me why he voted against it,
24 sir.

25 Q. Did he tell you he was voting against it for

1 religious reasons?

2 A. He voted against it on principle. Did you wish
3 an explanation, sir?

4 Q. No. I just find it odd that you think you know
5 why people voted on that night?

6 A. Sir, I have never claimed to know why Mrs.
7 Harkins voted the way she did. I only know Mr. Weinrich
8 told me personally why he chose to vote the way that he
9 did. I cannot give you a reason why Mrs. Harkins voted
10 the way she did.

11 Q. I'm sorry. Continue.

12 A. I'm finished, sir.

13 Q. Okay. Mr. Weinrich told you on more than one
14 occasion that he believes in creationism, correct?

15 A. Yes, sir.

16 Q. And he voted against the curriculum change,
17 correct?

18 A. Yes, he did, sir.

19 Q. Mrs. Brown, I'm going to ask you to take another
20 look at the chart that you were shown today that you
21 turned over reasonably, and I thank you for that, which,
22 along with that packet of documents that's referenced
23 August 27th. And in consideration for your eyesight,
24 the Plaintiffs have kindly agreed to project that chart
25 again.

1 A. Yes, sir.

2 Q. Do you recall seeing this document on or about
3 the curriculum meeting that you seem to recall toward
4 the late summer of 2004?

5 A. Sir, I have told you. The only recollection I
6 have is of the packet of the information, in the first
7 page of that packet, I remember discussion of that. I
8 do not recall any discussion on the second page, the
9 third page, I believe this is the third page, and the
10 fourth page. I only remember discussion on the first
11 page itself. When I found it, I didn't recall anything
12 at all and I still do not, sir.

13 Q. Okay. Let me see if I can jog your memory. If I
14 can't, I'll stop here. If you would direct your
15 attention to the one, two, three, fourth column over and
16 the second down. If you'd look at that. Do you
17 remember any discussion of people saying that Darwin
18 believed in a designer?

19 A. No, I don't, sir.

20 Q. All right. Let me just ask you to look down at
21 the last part, in case it may prompt your recollection.
22 Do you recall anyone talking about Darwin and
23 intelligent design as being different theories of
24 evolution?

25 A. As relates to this particular page, no, I do not,

1 sir.

2 Q. How about generally? Do you recall people
3 discussing intelligent design as another theory of
4 evolution?

5 A. Another theory of evolution?

6 Q. Do you recall any discussion along those lines?

7 A. Not as another theory of evolution, sir.

8 Q. Today you referenced that Mr. Bonsell had
9 expressed an interest in prayer in the schools and the
10 Bible, correct?

11 A. Yes, sir.

12 Q. Was there ever any policy put in place requiring
13 prayer in the schools?

14 A. No, sir, there was not.

15 Q. Was there any policy put in place requiring Bible
16 readings in the schools?

17 A. No, sir, there was not.

18 Q. You testified that you spoke about the founding
19 fathers, correct?

20 A. Yes, I did, sir.

21 Q. And, in fact, you referenced the Treaty of
22 Tripoli, signed by President John Adams, when you
23 discussed the pledge, correct?

24 A. Yes, sir, November 10th, 2003.

25 Q. When you left the board, Mrs. Brown, you

1 indicated that you would pray for everyone?

2 A. Yes, I did, sir.

3 Q. Did you regard that as an inappropriate
4 expression of religious conviction at a public school
5 board meeting?

6 A. Given the tenor of what had happened, no, sir, I
7 did not.

8 Q. Today you testified that Bill Buckingham said you
9 were an atheist?

10 A. Yes, sir.

11 Q. Mrs. Brown, I took your deposition on May 16th,
12 2005?

13 A. Yes, sir.

14 Q. And I wanted to get your side of the story. You
15 were under oath when I took your deposition, correct?

16 A. Yes, sir.

17 Q. And I asked you about comments directed to your
18 religious convictions?

19 A. Yes, sir.

20 Q. As we know, you told us about your conversation
21 with Jane Cleaver in her home, right?

22 A. Yes, sir.

23 Q. You told me how Bill Buckingham asked you a
24 question after he was kind enough to give you a ride
25 home?

1 A. That is correct, sir.

2 Q. Today you reference a comment that you attribute
3 to Mr. Bonsell, right?

4 A. Correct, sir.

5 Q. Mrs. Brown, you never told me on May 16th, 2005,
6 that Bill Buckingham called you an atheist.

7 MR. ROTHSCHILD: Objection, Your Honor.
8 What question is he referring to in the deposition? It
9 depends how the question was asked.

10 THE COURT: Are you trying to impeach her?

11 MR. GILLEN: Yes, sir.

12 THE COURT: Well, that's not the right way
13 to do it, so you're going to have to go to the
14 deposition and do it that way.

15 MR. GILLEN: That's fine.

16 THE COURT: The objection is sustained.

17 MR. GILLEN: Thank you.

18 BY MR. GILLEN:

19 Q. Mrs. Brown, I direct your attention to page 216
20 of your deposition.

21 A. Could you give me a line, sir?

22 Q. Sure. Start looking at page 216, line 6, and
23 you'll see we're referencing your speech. And there you
24 mentioned the comments, if you look at 216 and 217,
25 you'll see that you told me there about the comments you

1 attributed to Mrs. Cleaver and Mr. Buckingham, correct?

2 A. Yes, sir.

3 Q. And you'll see there's -- if you'll turn then to
4 page 220, line 22. And the question on line 22 is,
5 Apart from this comment which you've mentioned, were
6 there any other comments? You asked me, By this
7 individual? And I asked you, Well, from board members
8 directed to your religious beliefs?

9 A. And I answered, yes.

10 Q. Right. And then I asked you, You have mentioned
11 two; one by Mr. Buckingham and one by Mrs. Cleaver.
12 Besides those, any additional ones? And you said, One
13 in the hallway. And that's what you testified today
14 about Mr. Bonsell, correct?

15 A. Yes, sir.

16 Q. That's all you told me, Mrs. Brown, is that
17 correct?

18 A. That is correct, sir.

19 MR. GILLEN: I have no further questions,
20 Your Honor.

21 THE COURT: All right. Mr. Rothschild, any
22 redirect?

23 **REDIRECT EXAMINATION**

24 BY MR. ROTHSCHILD:

25 Q. Hello again, Mrs. Brown. Did Mr. Weinrich

1 explain to you why he voted against the curriculum
2 change that was voted in on October 18th?

3 A. Yes, he did, sir.

4 Q. And what did he tell you? What did he tell you
5 about his views?

6 A. We had an extensive conversation. I believe it
7 was within two or three days of October 18th.

8 Q. What did he tell you?

9 A. He told me that, while he viewed -- he favored
10 creationism, that is his belief, he felt that what the
11 board was trying to do was wrong and illegal, sir.

12 Q. Did he explain why he thought it was wrong?

13 A. Here, I'm attributing, okay. Mr. Weinrich was a
14 very strong believer in the separation of church and
15 state as to constitutionality of things, what was in the
16 constitution and what was not. He took his oath as a
17 municipal officer very seriously, as did I. We often
18 had conversations about that. School board directors
19 are considered municipal officers.

20 Q. This is what he conveyed to you?

21 A. Yes, sir, to both my husband and to myself.

22 Q. Did Mr. Weinrich oppose the policy at the October
23 18th meeting, speak up against it?

24 A. He did indeed, sir.

25 Q. You spoke up against it as well?

1 A. Yes, I did, sir.

2 Q. And did one or more of the teachers speak up
3 about what their position on the policy?

4 A. They were very concerned about it. They felt,
5 because it was to be included in the curriculum
6 instructional guide -- excuse me -- the curriculum
7 planned instructional guide, that they were being asked
8 -- they were being put into a position where they might
9 be in violation of the law.

10 Q. At that meeting, did anyone who voted for the
11 change in the curriculum explain why that change was a
12 good thing for the students?

13 A. No, sir, no one did.

14 Q. Did anyone in the board at that meeting explain
15 what intelligent design is?

16 A. No, sir.

17 Q. Did anyone who voted for the curriculum change
18 explain why intelligent design is good science?

19 A. No, sir.

20 Q. Were any outside speakers brought in to inform
21 the board on the subject of evolution -- I'm sorry, the
22 subject of intelligent design or the other proposed
23 changes to the curriculum guide?

24 A. Not that I am aware of prior to the policy being
25 implemented, sir.

1 Q. So that's at the meeting or prior?

2 A. Correct, sir.

3 Q. The October 18th meeting?

4 A. Yes, sir.

5 Q. Other than Pandas, did the board members receive
6 any materials explaining intelligent design before they
7 had to vote?

8 A. Not that I am aware of, sir.

9 Q. Did anyone describe what the problems in
10 evolution were that were being referred to in the
11 curriculum change?

12 A. At no time, sir.

13 Q. Ms. Brown, at the beginning of your cross
14 examination, Mr. Gillen asked you about the two
15 conversations you recalled about being asked whether you
16 were born again?

17 A. Yes, sir.

18 Q. And in the case of Mr. Buckingham, it was a
19 conversation that occurred on a ride home from a, I
20 think you said, a curriculum committee meeting?

21 A. A policy committee meeting, sir.

22 Q. So that's not -- that's different from the
23 curriculum committee meeting?

24 A. Very much so, sir.

25 Q. He actually asked you to refer to pages of your

1 deposition where you gave testimony on that subject,
2 correct?

3 A. Yes, I did.

4 Q. Could you turn to page 86 of your deposition?
5 And tell me when you're there, please?

6 A. I'm there, sir.

7 Q. Matt, you can put it up on the screen as well.
8 Ms. Brown, I'm going to read the questions that Mr.
9 Gillen asked you, and I'd like you to read the answers.

10 A. Yes, sir.

11 Q. Beginning at line 22. Now if I understand you
12 correctly, Mrs. Brown, it was some discussion of the
13 biology text outside of this April meeting? If you
14 could please answer?

15 A. I'm getting there. Mr. Buckingham and I had a
16 discussion. He had -- okay. There are a couple words
17 missing there. He had occasion to drive me home. I did
18 not drive that day. He was kind enough to offer me a
19 ride home. And during that ride, we discussed the role
20 of faith in the schools.

21 Q. Do you recall what Mr. Buckingham said to you on
22 that topic?

23 A. He felt that it was important to bring God back
24 into the classroom.

25 Q. And when you had this conversation, did you have

1 a sense for what he meant by that?

2 A. I am not sure how much clearer one can be, other
3 than to say, we want to bring God and faith back into
4 the classroom. What exactly do you want?

5 Q. That's what I'm trying to get. Did he make any
6 specific recommendations for a course of action? Did he
7 say the kids should pray again in school?

8 A. Yes, he did.

9 Q. Anything else, did he mention?

10 A. He felt that we should bring prayer and Bible
11 reading back into the schools. It so happens that Mr.
12 Buckingham and I are the same age. So we both remember
13 that time period. And there was a discussion relating
14 to the breakdown of society and morality. And Mr.
15 Buckingham attributed that to the removal of prayer, the
16 Bible, etc., from our school systems.

17 Q. And I take it, you had a discussion with him, and
18 I'm sure that he did not hear just plain yeses from you.
19 How did you respond to Mr. Buckingham?

20 A. I said very little. I responded when necessary
21 because I was frightened.

22 Q. Just so that I understand you correctly, when you
23 say frightened, did you mean you felt uncomfortable with
24 this sort of --

25 A. I was physically frightened of what he was

1 saying.

2 Q. Okay. What do you mean by that, Mrs. Brown? Did
3 you feel threatened?

4 A. No, I wasn't in fear of him. I was frightened of
5 what he was saying and what I saw as a possibility of
6 what could occur.

7 Q. Is what actually occurred in Dover with the
8 change of the biology curriculum the kind of thing you
9 were frightened of?

10 A. Yes, sir, it was the beginning.

11 MR. ROTHSCHILD: I have no further
12 questions.

13 THE COURT: Mr. Gillen, recross.

14 **REXCROSS EXAMINATION**

15 BY MR. GILLEN:

16 Q. Mrs. Brown, you said no one explained what the
17 gaps were in Darwin's theory, correct?

18 A. Yes --

19 MR. ROTHSCHILD: Objection, Your Honor,
20 mischaracterizes the testimony. That was not what she
21 said and that was not my question.

22 THE COURT: Well, she answered the question.

23 MR. ROTHSCHILD: Your Honor, if I could
24 clarify? I asked her whether anybody identified the
25 problems in Darwin's theory.

1 THE COURT: I'll give you one more round on
2 redirect if you want to clarify the answer. I'll
3 overrule the objection. The answer stands. You can
4 proceed.

5 BY MR. GILLEN:

6 Q. Didn't -- didn't the language you suggest have to
7 do with gaps in Darwin's theory?

8 A. Yes, sir.

9 Q. Were you proposing language that you thought you
10 had no basis for?

11 A. What I was trying to do was clarify to the best
12 of my ability. I knew that we would be having a
13 discussion on this, and I was trying to give a starting
14 point of suggestions. If you notice, I did not mention
15 intelligent design, sir.

16 Q. Do you know that the final statement passed by
17 the board includes a reference to gaps in Darwin's
18 theory?

19 A. Yes, I do, sir. It was not my original language
20 though, sir.

21 MR. GILLEN: No further questions, Your
22 Honor.

23 THE COURT: Now we'll break my general rule
24 of two rounds each. Do you have any clarification you
25 want --

1 MR. ROTHSCHILD: I won't let you break that
2 rule, Your Honor. No reredirect.

3 THE COURT: Rules are sometimes made to be
4 broken, but I appreciate that, Mr. Rothschild and Mr.
5 Gillen. All right. That will complete your testimony.
6 Ma'am, you may step down. Let's take the exhibits for
7 this witness. They are as follows: P-21 and P-25 are
8 the board issues. Are you moving for the admission of
9 those?

10 MR. ROTHSCHILD: I am, Your Honor.

11 THE COURT: Any objection?

12 MR. GILLEN: No objection.

13 THE COURT: They're admitted. P-45, P-46,
14 P-53, and P-54 are all articles. I assume we'll hold
15 admitting the articles subject to additional testimony,
16 is that correct?

17 MR. ROTHSCHILD: That's right, Your Honor.

18 THE COURT: All right. So you're not moving
19 for the admission of those. P-660 is the packet of
20 documents provided at the 8/27/04 board meeting. Are
21 you moving for the admission of P-660?

22 MR. ROTHSCHILD: I am, Your Honor.

23 THE COURT: Any objection?

24 MR. GILLEN: We only object to the
25 handwritten notation on the top.

1 THE COURT: You'll have to refresh my
2 recollection. The handwritten notation?

3 MR. GILLEN: Sure. I have no problem with
4 -- she was given the documents. We object to the
5 handwritten notations, which is hearsay, and we don't
6 believe that it was -- and there's no evidence so far as
7 I can tell.

8 THE COURT: Was that the date, do you
9 recall?

10 MR. GILLEN: Yes.

11 THE COURT: Do you want to redact it for the
12 record?

13 MR. ROTHSCHILD: I don't.

14 THE COURT: No, I know you don't. I knew
15 that, Mr. Rothschild. It may be after lunch, but I'm
16 relatively quick in the uptake. Mr. Gillen, are you
17 saying you want to redact it?

18 MR. GILLEN: Yes, because it is a hearsay
19 statement. She has testimony in trial that's been
20 subject to cross examination about her dating, but the
21 statement itself is hearsay.

22 MR. ROTHSCHILD: Your Honor, the declarant
23 was on the stand and verified this. I mean, I really
24 don't understand --

25 THE COURT: I find it reliable. She said

1 she got her date mixed up. She interposed another date.
2 You had the opportunity to cross-examine her on a change
3 in the date. I'm going to admit it. I don't think
4 there's any reason to exclude it, so that's admitted
5 without any necessity of redacting the exhibit. All
6 right. P-73 is the memo regarding the biology
7 curriculum dated 9/20/04.

8 MR. ROTHSCHILD: I move that in.

9 MR. GILLEN: No objection.

10 THE COURT: All right. That's admitted.
11 P-681 is the letter dated from the witness, dated
12 September 22, '04.

13 MR. ROTHSCHILD: We would like to move that
14 in.

15 THE COURT: Or statement from the witness, I
16 guess, better characterized, I think. Was it a
17 statement or a letter?

18 MR. ROTHSCHILD: I think it was actually a
19 -- it was 681, you said?

20 THE COURT: Yes.

21 MR. ROTHSCHILD: That was Mrs. Brown's
22 memorandum of September 22nd in which she responded.

23 THE COURT: Yeah, it's a memo. I
24 mischaracterized it both ways as a memorandum. Are you
25 moving for admission?

1 MR. GILLEN: No objection.

2 THE COURT: P-681 is admitted. P-75 is the
3 memo from Baksa dated 9/28/04.

4 MR. ROTHSCHILD: We are moving that in.

5 MR. GILLEN: No objection.

6 THE COURT: That's admitted. P-84, A, B,
7 and C, the memo to the board, again, from Baksa, with
8 attachments.

9 MR. ROTHSCHILD: We are moving that into
10 evidence.

11 MR. GILLEN: No objection.

12 THE COURT: That's admitted. P-151 is the
13 Dover curriculum advisory committee comments. Moving
14 for admission of that?

15 MR. ROTHSCHILD: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. GILLEN: I lost track of the number,
18 Your Honor.

19 THE COURT: 151, Mr. Gillen. We're going
20 rapidly.

21 MR. GILLEN: No objection, Your Honor.

22 THE COURT: All right. 151, P-151 is
23 admitted. P-209 is the Dover biology curriculum guide.
24 Are you moving for the admission of that?

25 MR. ROTHSCHILD: I am, Your Honor.

1 THE COURT: That's P-209 then. Mr. Gillen.

2 MR. GILLEN: No objection.

3 THE COURT: That's admitted. P-688 is the
4 -- that is actually the resignation speech, as read into
5 the record by the witness. Are you moving for that,
6 admission of that?

7 MR. ROTHSCHILD: I am, Your Honor.

8 THE COURT: No objection.

9 MR. GILLEN: Make it easier to read. No
10 objection.

11 THE COURT: All right. That's admitted.
12 P-688 is admitted. Now I have no other Plaintiffs'
13 exhibits. Do I have them all?

14 MR. ROTHSCHILD: You do have all of the
15 exhibits that we would like to admit through this
16 witness. There was an Exhibit 42 from either yesterday
17 or the day before that we did have to redact. We have
18 now provided redacted versions of P-42 to the Court, and
19 we would like to move that into evidence.

20 THE COURT: Identify just what P-42 is for
21 the record.

22 MR. ROTHSCHILD: It's the agenda from the
23 June 7th board meeting.

24 THE COURT: All right. You took the
25 handwriting off it, is that correct?

1 MR. ROTHSCHILD: That is correct, Your
2 Honor.

3 THE COURT: Any objection to the redacted --

4 MR. GILLEN: No, Your Honor.

5 THE COURT: -- copy. All right. P-42 is
6 admitted. Then no other Plaintiffs' exhibits for this
7 witness. And then I show no exhibits referred by you,
8 Mr. Gillen, on cross.

9 MR. GILLEN: That's correct.

10 THE COURT: So we have nothing else. So
11 that will complete all the exhibits for this witness.
12 And we are prepared then for your next witness?

13 MR. HARVEY: Your Honor, the Plaintiffs call
14 to the stand, Jeff Brown.

15 Whereupon,

16 **JEFFREY ALLEN BROWN**

17 having been duly sworn, testified as follows:

18 THE WITNESS: Jeffrey A. Brown, or Jeffrey
19 Allen, whichever you prefer. J-E-F-F-R-E-Y. A-L-L-E-N.
20 B-R-O-W-N.

21 **DIRECT EXAMINATION**

22 BY MR. HARVEY:

23 Q. Mr. Brown, I was going to ask you your name, but
24 then I realized you just said it. Are you married?

25 A. Yes.

1 Q. Please tell us the name of your wife?

2 A. Carol H. Brown.

3 Q. And Mr. Brown, did you ever serve as a member of
4 the board of directors in the Dover Area School
5 District?

6 A. Yes.

7 Q. Approximately what years?

8 A. From 1999 to 2004.

9 Q. And do you remember the date in 2004 when you
10 resigned from the board?

11 A. October 18th.

12 Q. Who was the president of the board of the Dover
13 Area School District on October the 18th, 2004?

14 A. Alan Bonsell.

15 Q. Do you remember when Mr. Bonsell ran for the
16 board?

17 A. Yes.

18 Q. What year was that?

19 A. That would have been 2001.

20 Q. Did you run with him?

21 A. No.

22 Q. Do you recall a conversation with him when he was
23 running for the board about what he wanted to do as a
24 board member?

25 A. Yes.

1 Q. Please tell.

2 A. Sorry?

3 Q. Please tell us what you can remember he told you
4 what he wanted to do as a board member?

5 A. He wanted to -- he did not believe in evolution.
6 He wanted creationism taught side-by-side with evolution
7 in our biology classes. He felt that taking school
8 prayer and Bible reading out of school was a mistake and
9 he wanted to see it reinstated at Dover.

10 Q. When was this conversation?

11 A. During the summer of 2001.

12 Q. Do you remember where that took place?

13 A. At his house.

14 Q. Do you remember why you were there?

15 A. Yes. My wife was running with Mr. Bonsell and
16 two other people, Mrs. Harkins and Mrs. Yingling, as a
17 slate of candidates, and I was involved in the campaign.

18 Q. Do you recall, did the board of directors ever
19 have retreats?

20 A. Yes.

21 Q. Do you recall a retreat in January of 2002?

22 A. Yes.

23 Q. How is it that you recall that retreat?

24 A. The other day, Eric Rothschild showed us some
25 documents from those retreats and it jogged my memory.

1 I had forgotten them prior to that.

2 Q. And do you remember what Mr. Bonsell said at that
3 retreat?

4 A. The -- we were asked as board members what were
5 our areas of major concern, what would we like to see
6 the board do. And Mr. Bonsell mentioned the teaching of
7 creationism and Bible reading as two of the areas of his
8 concern. Those were not the only ones. He also
9 mentioned American history and school uniforms, as I
10 recall.

11 Q. Mr. Brown, are you -- do you remember him saying
12 that or are you just telling us what you saw in the
13 documents?

14 A. No, I remember him saying those things. I had --
15 again, seeing it brought it back.

16 Q. Now do you remember a retreat of the Dover Area
17 School District Board of Directors in March of 2003?

18 A. Yes.

19 Q. And can you tell us how is it that you remember
20 that retreat?

21 A. Again, the same thing, the documents. It
22 triggered it. It brought it back. And, yeah, I
23 remember that.

24 Q. Do you remember what Mr. Bonsell said at that
25 retreat?

1 A. He mentioned, again mentioned creationism. He
2 felt it belonged in biology class alongside evolution.

3 Q. Do you recall an occasion when you were inside
4 Dover Area High School with a man named Larry Reeser,
5 another man named Noel Weinrich, and Mr. Bonsell?

6 A. Yes.

7 Q. And do you remember that you had a conversation
8 in there about a piece of art?

9 A. Yes.

10 Q. And can you tell us, what was the piece of art
11 that you had the conversation about?

12 A. It was a series of panels. It was painted on
13 plywood, four-by-eight sheets of plywood. And it
14 comprised a mural, a very large mural, obviously, that
15 many sheets of plywood. And it depicted an ape at one
16 end and a very recognizable modern day man at the other
17 and a series of evolutionary stages in between.

18 Q. Now do you remember when that happened?

19 A. It would have been -- it would have been in 2003,
20 during, I believe it was during the summer, but I'm not
21 positive.

22 Q. And do you remember the conversation that you
23 had --

24 A. Yes.

25 Q. -- on the subject? Can you tell us what you can

1 remember of that conversation?

2 A. Mr. Reeser gave the opinion that he felt the
3 picture was offensive because it was -- it depicted male
4 nudity. And all of us agreed with him, that it could
5 certainly be taken as that. I didn't have a problem
6 agreeing with him on that.

7 And then Mr. Bonsell, I remember -- I can't
8 remember his exact words, but I do remember him
9 literally like snorting through his nostrils and
10 commenting on the subject matter, as Larry Reeser had
11 said, the -- I don't think kids should be exposed to
12 this kind of thing.

13 And then Alan volunteered the opinion, he didn't
14 think they should be exposed to this kind of indication
15 that this is where we came from, that sort of thing. I
16 can't remember his exact words, but that was the gist of
17 it.

18 Q. Who was the president of -- well, you already
19 told us that Mr. Bonsell was the president of the board
20 in 2004. Can you tell us, who was the head of the
21 curriculum committee that year?

22 A. In 2004?

23 Q. Yeah.

24 A. William Buckingham.

25 Q. How did Mr. Buckingham get to be head of the

1 curriculum committee?

2 A. The heads of committees are always appointed by
3 the president, so Alan Bonsell would have appointed him.

4 Q. Do you recall a conversation with Superintendent
5 Nilsen about the rotating nature of the presidency of
6 the board of directors?

7 A. Yes.

8 Q. Tell us what you can recall about that
9 conversation?

10 A. Well, it began with his complaint that we had
11 instituted, beginning in actually December of 2001, we
12 had instituted a policy where a person would serve one
13 year as president, step down, and a new president would
14 be elected. It was not set in stone that the vice
15 president would automatically become the president, but
16 that was pretty much the way it was understood.

17 The board always had the right to elect someone
18 else. And Dr. Nilsen said that he found it very
19 difficult to deal with, because each incoming -- each
20 year, he had to deal with a new set of priorities. And
21 he mentioned that my wife's priorities had been all-day
22 kindergarten, world languages; Mr. Weinrich, who had
23 succeeded her as president, his concerns had been the
24 building project; and that Mr. Bonsell's concerns had
25 been American history and creationism.

1 Q. Do you know what Mr. Bonsell's view on evolution
2 is?

3 A. He regards it as fiction.

4 Q. How do you know that?

5 A. Because he told me.

6 Q. And do you remember when he told you that?

7 A. I can't give you an exact date, but it would have
8 been -- I can't give you an exact date, no.

9 Q. Do you know what Mr. Buckingham's views on
10 evolution are?

11 A. They're essentially the same. I think he
12 described it as atheist propaganda.

13 Q. And how do you know that?

14 A. Because he said it in my presence.

15 Q. And can you remember when that happened?

16 A. It was an executive session. There were other
17 people present when Mr. Buckingham made his statement.
18 Now what Alan said to me was said in a more private
19 conversation. It was at a board meeting, but I cannot
20 remember when it was.

21 Q. In 2003, Mr. Bonsell was the head of the
22 curriculum committee, isn't that true?

23 A. Yes.

24 Q. Did you ever have a conversation with Mr. Bonsell
25 about why he wanted to be the head of the curriculum

1 committee?

2 A. He had stated that, actually when he was still
3 running for the board, he hadn't said he wanted to be
4 the head of the curriculum committee -- well, maybe he
5 did. At any rate, I remember him saying he wanted to be
6 on the curriculum committee because he had concerns
7 about the teaching of evolution and he wanted to see
8 some changes in that area.

9 I am not positive he was more specific than that,
10 but he had other statement -- it runs together in my
11 mind literally.

12 Q. Do you ever remember a conversation regarding
13 Heather Geesey and Mr. Bonsell and Jane Cleaver and Mr.
14 Buckingham where they were talking about taking prayer
15 out of school?

16 A. Yes.

17 Q. When was that conversation, if you recall?

18 A. That would have been in 2004, either in August or
19 September.

20 Q. Tell me what you can recall of that conversation?

21 A. The -- they were talking among themselves. And I
22 was only standing a few feet away. And we were stating
23 -- it began with one of them -- it may have been Mr. --
24 I'm not certain who started the conversation. I know
25 that the conversation concerned -- it began with the

1 premise that taking prayer and Bible reading out of
2 school had been a mistake and had caused a great number
3 of problems.

4 And I cannot state which -- who said what. They
5 were all part of the conversation. And they were
6 nodding heads during the conversation. I came away with
7 the feeling that they all agreed with the things being
8 expressed. And there was no real concrete endeavor to,
9 you know, they didn't discuss how they could put it back
10 in, but they were all very much of the opinion that
11 these changes had been a mistake. That was the word
12 that was used, mistake.

13 Q. Do you recall a conversation in or around June of
14 2004 with Mr. Weinrich and Mr. Bonsell about the subject
15 of intelligent design?

16 A. Intelligent design? No.

17 Q. Well, do you recall -- let me ask you another
18 question. Do you recall a conversation with Mr. Bonsell
19 and Mr. Weinrich in or around June 2004 about the
20 origins of life?

21 A. Yes.

22 Q. Tell us what you can recall of that conversation?

23 A. They were addressing a -- I can't remember the
24 fella's name, but it was a community member, and he had
25 spoken -- Mr. Buckingham had objected to the book

1 Biology as being laced with Darwinism. And this person,
2 this member of the community, whose name escapes me, was
3 defending Darwin's theory.

4 And Mr. Buckingham, Mr. Bonsell, and Mr. Weinrich
5 were all addressing him during the public comment
6 section. And --

7 Q. Let me just ask you.

8 A. Yes, you'll have to be more specific here.

9 Q. I'm not asking you about a board meeting.

10 A. You're not asking about a board meeting, all
11 right.

12 Q. I'm asking if you can recall a conversation
13 outside of a board meeting with Mr. Weinrich and Mr.
14 Bonsell about the subject of origins of life?

15 A. Yeah, I can recall a conversation with them, but
16 I'm not sure what specific one you're referring to. I'm
17 sorry.

18 Q. Do you remember having a conversation with them
19 outside the administration building in Dover?

20 A. Thank you. That's much more helpful. Yes.

21 Q. Tell us what you can -- when was this
22 conversation?

23 A. It was, I believe it was the same day that we had
24 toured the building. I believe it was later in that
25 same day.

1 Q. And when was that?

2 A. Again, I'm not certain. It was -- it was in
3 2003, but -- and I believe it was in the summertime, but
4 I can't be more specific than.

5 Q. Okay. Let's put that aside for now.

6 A. I'm sorry.

7 Q. Do you recall a meeting of the Dover Area School
8 District Board of Directors on June the 7th of 2004?

9 A. Yes.

10 Q. And did you attend that meeting?

11 A. Yes.

12 Q. And do you remember Barrie Callahan speaking at
13 that meeting?

14 A. Yes, I do.

15 Q. And do you remember what Barrie Callahan said?

16 A. Not word for word, but she was questioning the
17 status of the book, Biology; what was happening, why
18 hadn't it been approved, things of that nature.

19 Q. Had Mrs. Callahan raised this before?

20 A. Yes, she had.

21 Q. And had anybody on the board offered support for
22 her previously?

23 A. The previous -- I believe it was at the previous
24 meeting, she had brought up the subject, and Mr.
25 Buckingham had responded that the book is currently

1 under review. And that was pretty much the end of it.

2 Q. And how many times before this meeting on June
3 the 7th had she raised this subject of the Biology
4 textbook?

5 A. Now that, I can't answer. It was probably more
6 than that one time, but I can't be sure about that.

7 Q. Do you recall what was said by anyone on the
8 board to Mrs. Callahan on June the 7th, 2004, when she
9 raised the subject of the Biology text?

10 A. Vividly. Mr. Buckingham told her that he
11 objected to the book and would not recommend it because
12 it was, quote, laced with Darwinism, unquote.

13 Q. And do you remember anything else that Mr.
14 Buckingham said in that conversation in response to Mrs.
15 Callahan?

16 A. Nothing so vividly as that one. That one really
17 sunk in.

18 Q. Do you remember any other members of the board
19 speaking to Mrs. Callahan in response to her question?

20 A. On that particular instance? No, not off the top
21 of my head.

22 Q. Do you remember a student named Max Pell speaking
23 at that meeting?

24 A. That's the one. That's the person -- that's the
25 community member whose name I could not remember, yes.

1 Q. Do you remember what Mr. Pell said on that
2 occasion?

3 A. Not word for word, but the gist was, he was very
4 supportive of Darwin's theory, and he didn't understand
5 the objections to it. And Mr. Weinrich and Mr. Bonsell
6 and Mr. Buckingham literally took turns arguing with
7 him. The arguments took various forms depending who was
8 speaking.

9 I remember Mr. Weinrich stating that, when you
10 teach one theory, you're, in essence, teaching -- when
11 you teach only one theory, you are, in essence, teaching
12 it as fact. I remember him making that statement. But
13 all three of them were supporting the addition or at
14 least the possibility of the addition of creationism
15 into the biology curriculum.

16 Q. Do you remember anyone discussing intelligent
17 design at that meeting?

18 A. I'm not positive it was that meeting or not.
19 There was one mention of the board, and I made it. But
20 it may have been at the succeeding meeting. I'm not
21 positive. There was no discussion of intelligent
22 design, no.

23 Q. When was the mention of intelligent design that
24 you have in mind?

25 A. At one point, Mr. Buckingham used the word

1 creationism, and I suggested intelligent design. And I
2 better explain that. At that point, I knew very little
3 about it. I had seen the word in the newspaper article,
4 Newsweek. I'm not sure where I saw it. But I was aware
5 of the term. And my concerns at that time -- and you're
6 going to make me give some background here -- I was very
7 concerned that --

8 Q. Let me ask you a question. What was your concern
9 at that time?

10 A. Thank you. My concern, as far as the opinions
11 that were being given, was that we might be stating in
12 our biology classes -- in fact, I was getting the
13 opinion, impression from the board members opposed to
14 teaching evolution that we were literally telling our
15 students, evolution occurs without any form of plan,
16 pattern.

17 There's no -- it's all accident. It's purely,
18 that we're essentially talking about a universe with no
19 greater purpose. And I felt, if that was indeed the
20 case, then we were tramping on people's toes, because
21 the fact of the matter is, whether there's a greater
22 purpose or not is beyond the purview of science. It is
23 -- we're in the realm of philosophy or theology, if you
24 will. And I was concerned, if we were doing that, and I
25 had read this term phrase, intelligent design, and I

1 interpreted that as meaning simply a counter point. And
2 I wanted to -- I didn't have a problem with the phrase
3 intelligent design inasmuch as if it meant only that
4 there is a body of opinion out there that feels this may
5 not have all been blind chance.

6 If we were going to tell them one, I felt we were
7 within our rights to tell them both. And I suggested
8 that phrase to Mr. Buckingham. And Mr. Bonsell echoed
9 it. Now this may have been the June 7th meeting. It
10 may have been the June 14th. I cannot recall which one.
11 That was the first time intelligent design was ever
12 mentioned at a Dover board meeting, and there was
13 nothing further said about it.

14 It was just my mentioning the phrase. Alan
15 repeating what I had said, intelligent design. And that
16 was it. It didn't come up again at that meeting.

17 Q. Do you recall a meeting of the Dover Area School
18 District Board of Directors on June the 14th of that
19 same year?

20 A. Yes.

21 Q. And did the subject of the Biology textbook come
22 up?

23 A. Yes.

24 Q. Did the subject of creationism come up?

25 A. Yes.

1 Q. Tell us, if you can remember, how the subject of
2 creationism came up?

3 A. It actually came up during the public comment
4 section of the meeting, which is actually the first part
5 of our meeting. Before we go into our regular agenda,
6 we have public comment. And Mr. Buckingham's wife spoke
7 for 15 minutes, which is 10 minutes longer than we
8 normally give members of the public to speak, but there
9 was no attempt from the chair to cut her off.

10 For 15 minutes, she essentially evangelized and
11 stated that it was our duty, our responsibility to
12 include creationism into the classrooms. I believe, but
13 I'm not -- it seems to me she also mentioned Bible
14 reading and prayer, but I can't be certain of that. I
15 think she said it. I'm not positive.

16 But she definitely was speaking in favor of
17 including creationism in our biology curriculum. And
18 the public comment section actually spilled over into
19 the board members got involved in it. And I began
20 arguing that we can't teach creationism. And Mr.
21 Buckingham became very upset with me, and said, 2000
22 years ago, someone died on a cross for us. Isn't it
23 time we take a stand for him?

24 Q. Now I'd like to change the subject for just a
25 second and talk about the textbook of Pandas. Have you

1 ever heard of that?

2 A. Yes.

3 Q. When did you first learn about Of Pandas and
4 People?

5 A. It would have been the Thursday before Mr.
6 Buckingham proposed votes -- our meetings were always on
7 Monday. The Thursday prior to that Monday -- this is
8 very complicated, but I don't know the date off the top
9 of my head. At any rate, on a Thursday, my wife got a
10 phone call from Mr. Baksa, the assistant superintendent,
11 who told her that Mr. Buckingham had this book, Of
12 Pandas and People, that he was recommending the district
13 buy as a supplemental biology text.

14 Q. Let me stop you right there and see if we can
15 clarify the date of this before you continue. There was
16 a meeting of the Dover Area School District Board of
17 Directors on August the 2nd, 2004, at which there was a
18 discussion of approval of a biology textbook. Do you
19 recall that?

20 A. Yes.

21 Q. Now where was this telephone call that you were
22 just relating in relation to that August the 2nd
23 meeting?

24 A. That was the Thursday prior to that date.

25 Q. Okay. Now tell us how you learned on the

1 Thursday prior to the August 2nd meeting about the
2 textbook, Of Pandas and People?

3 Q. From my wife. She took the call. She relayed it
4 to me. I came home from work. I don't think she had
5 the car that day. And she asked me if I would go to the
6 administration building and pick up a copy, because she
7 was livid. She was on the curriculum committee. And
8 Mr. Buckingham was proposing buying a book to add to the
9 curriculum and not even consulted with her.

10 Q. Was this what she told you on that occasion?

11 A. That's what she told me, yes.

12 Q. And then what did you do?

13 A. I went to the administration building to see Mr.
14 Baksa, and he said, I don't have a copy. I think Dr.
15 Nilsen does. I went to Dr. Nilsen's office. He said,
16 no, I gave my copy to Sheila Harkins.

17 Q. Then after Mr. Nilsen told you that, what did you
18 do?

19 A. Dr. Nilsen called Sheila. She was at home. He
20 asked her, could I come over and pick up the book. She
21 said, yes. So I went to her house.

22 Q. Did you have a conversation with Mrs. Harkins at
23 her house?

24 A. Yes.

25 Q. And did you discuss the subject Of Pandas and

1 People?

2 A. Well, I couldn't really discuss it -- well, okay.
3 Only in the sense that they wanted to buy the book. I
4 hadn't read it yet, obviously.

5 Q. Do you remember what she said to you in that
6 conversation?

7 A. I remember that conversation pretty vividly. The
8 first thing I said -- she said -- the first thing she
9 said to me was, I think we should buy this book. I
10 looked at her. I said, Sheila, you don't even want to
11 buy the books that we're supposed to buy, why do you
12 want to buy this book that we don't even need and the
13 state is not requiring us to buy.

14 She said, read the book. I said, fine, I plan to
15 read it, but why are you so in favor of buying this
16 book? She said, just read the book. And I told her at
17 that point, I said, I can't support buying a book that
18 is not required by the state, because we had just, to
19 get our budget passed, we had just cut our library
20 funding in half.

21 We had -- we were discussing and later passed a
22 motion whereby volunteers for the district would be
23 required to pay \$10.00 a head toward the costs of
24 defraying the costs of the background checks that were
25 required, due by law.

1 I said, you can't stand there and cut library
2 books in half and make people pay \$10.00 a head to work
3 for the district for free, and then buy a textbook that
4 you don't even need. I said, if we do this, we're
5 likely to get sued. Initially my argument was, misuse
6 of tax payer funds.

7 She started going on about how this book was such
8 an eye opening thing of what's wrong with evolution and
9 so on and so forth. I told her, I said, Sheila, we
10 can't touch that subject.

11 I said, with all the statements that Bill has
12 made that have been in the press and have actually gone
13 wire service, I said, if we even touch this subject,
14 we're going to end up in court. And she remained
15 adamant. She was in favor of buying the book. I took
16 it home, and I got to the second paragraph --

17 Q. Well, let's stop right there. You took the book
18 home with you, is that your testimony?

19 A. Yes.

20 Q. Did you read it when you got home?

21 A. Yes.

22 Q. And how long did it take you to read it?

23 A. All weekend. Casey and I traded back and forth.

24 Q. Did you discuss it?

25 A. Yes.

1 Q. Tell me, what was your reaction to the book?

2 A. By the second paragraph, I felt they were calling
3 me an atheist because I believe in evolution. And that
4 made me furious. I remember talking to Casey and, you
5 know, she made the comment, it's bad science and worse
6 theology. And I said, absolutely. That was pretty much
7 our take on it.

8 Q. Now was the board -- excuse me, was the book
9 discussed at the next meeting of the board on August the
10 2nd?

11 A. Yes.

12 Q. And do you remember if Mr. Buckingham took a
13 position on that book?

14 A. Oh, yes.

15 Q. And can you tell us, what was his position?

16 A. All right. Mr. Buckingham introduced the motion
17 to buy the textbook, Biology, which was on our agenda.
18 And we only had eight members there. Mrs. Cleaver was
19 not present. The -- we took the vote. Four members,
20 Mr. Buckingham, Mrs. Harkins, Mrs. Yingling and Mrs.
21 Geesey all voted, no, they would not buy the book. Mr.
22 Bonsell, myself, Mrs. Brown, and Mr. Weinrich all voted,
23 yes. The motion failed. It was a four, four tie.

24 At that point, Mr. Buckingham stated that he had
25 five votes to buy the book, Of Pandas and People, as a

1 supplemental text, but because the administration had
2 refused to recommend it under state law, it would
3 require six votes. And he didn't have the sixth vote.
4 And what he said -- and he said this in a public
5 meeting -- I will bring this up at a future meeting.

6 I will first introduce a motion to buy the book
7 Of Pandas and People. He was very explicit about this.
8 If it gets the necessary six votes, I will then
9 introduce the motion to buy the book, Biology, by
10 Prentice Hall. And I will release my votes to vote for
11 it.

12 If, however, it fails to get six votes, I will
13 not release my votes for the book, Biology. And at that
14 point, I got extremely angry and we engaged in -- I
15 demanded to know what would happen if I were to read
16 this book and feel it was not worth the tax payer's
17 money. And he looked me right in the eye and said, then
18 you don't get your book. And he said, and I quote,
19 either I get my book or you don't get yours.

20 Q. Did the book, approval of the Biology textbook
21 came -- was it approved at that meeting?

22 A. Eventually, yes. Mrs. Yingling changed her vote.

23 Q. Now do you recall, moving away from that meeting,
24 do you recall an executive session -- first of all, tell
25 us, what is an executive session of the board of

1 directors?

2 A. All right. We are allowed to call -- under the
3 Sunshine Act of Pennsylvania, we must conduct our
4 meetings in public, in the sunshine. But there are
5 specific exemptions. If we are discussing legal matters
6 or personnel issues or contractual matters or discipline
7 for minors, we go into what's called executive session.

8 The board, the superintendent, sometimes other
9 administrators, if needed, will be present. But it's
10 not -- there are no reporters present. The public is
11 not. It's essentially out of the sunshine, to use the
12 legal term.

13 Q. Do you recall an executive session of the Dover
14 Area School District Board of Directors where it was a
15 donation of Of Pandas and People to the School District
16 was discussed?

17 A. Yes.

18 Q. Tell us what you can remember about that
19 discussion?

20 A. I believe this was in September of 2004. By this
21 time, Bill was resigned to not getting his books through
22 the school board. And Mr. Buckingham stated in this
23 executive session, and I'm pretty certain it was in
24 September, that he was soliciting donations to buy the
25 books to be donated to the school to be placed in the

1 classrooms.

2 And I told him, you might have a problem with
3 that. I said, if you want to put it in the library, no
4 problem. We have a standing policy for, you know,
5 accepting donations to the library. I said, but there's
6 no policy on donating books directly to the classroom.
7 And he looked me right in the eye and said, I am not
8 asking people to contribute money for these books if
9 they're just going into the library.

10 I want them in the classroom. I said, well, I'm
11 just telling you what the policy is. And I dropped the
12 subject because by that time, relations between Mr.
13 Buckingham and I were pretty poisonous anyway and I
14 didn't need to get into it any further. And at that
15 point, Mrs. Cleaver and Mr. Bonsell both said that he
16 should put them down for a donation.

17 Q. Did you later learn that the Pandas had been
18 donated to the school district?

19 A. Yes.

20 Q. When did you learn that?

21 A. I believe it was the first meeting in October of
22 2004. Dr. Nilsen made a statement to the board during
23 our public meeting that the books had been accepted and
24 that the teachers have -- I believe he used the phrase
25 have no problem with their being placed in the biology

1 classrooms as reference books.

2 Q. Now did you attend the meeting of the board on
3 October the 18th of 2004?

4 A. Yes.

5 THE COURT: Mr. Harvey, if you're going to
6 get into a new line of questions, why don't we take this
7 opportunity to take our afternoon break. And we'll
8 break for about 20 minutes at this juncture, and then
9 we'll return. And I would remind you that, if it works
10 well, counsel, I would intend to go to 5:00, or as close
11 to 5 as we can get this afternoon. So we'll recess for
12 about 20 minutes.

13 (Whereupon, a recess was taken at 2:57 p.m.
14 and proceedings reconvened at 3:25 p.m.)

15 THE COURT: As a matter of housekeeping,
16 before Mr. Harvey commences again his direct
17 examination, we'll note that we may not need to go to 5
18 today, but we'll go no later than 5 today, depending on
19 the witnesses presented by the Plaintiff. Tomorrow, we
20 will start our session at 12:30 p.m., by agreement with
21 counsel, and it is not anticipated, for everybody's
22 benefit, I will say, it is not anticipated that that
23 will be a long session. It will be a rather abbreviated
24 session tomorrow afternoon. Likely, it will not last
25 more than several hours. Counsel, is that a fair

1 statement, at best? It may be shorter than that.

2 MR. GILLEN: Yes, Your Honor.

3 THE COURT: Then we'll be in recess Monday
4 and Tuesday of next week, and we'll reconvene on
5 Wednesday of next week. So with that, Mr. Harvey, you
6 may continue.

7 **DIRECT EXAMINATION (CONTINUED)**

8 BY MR. HARVEY:

9 Q. Do you recall an executive session of the Dover
10 Area School District Board of Directors prior to its
11 meeting on October the 18th of 2004?

12 A. Yes.

13 Q. And do you recall what Mr. Buckingham said during
14 that executive session?

15 A. I recall at least some of the things he said.
16 Immediately before we adjourned to go to our regular
17 meeting, just prior to that, Dr. Nilsen had handed out
18 two alternate -- our executive session was called for a
19 non-related matter, but while we were in there, he
20 handed out an appended version from the teachers -- the
21 teachers had learned about three and a half hours prior
22 to our meeting that we were to vote on this curriculum
23 change that night.

24 And they had, the science department had put
25 together a motion that they felt they could live with, a

1 compromise resolution, if you want to call it that. The
2 administration had also put together a compromise
3 resolution on their own. He handed us copies of both
4 those.

5 Now we had in our board packets a compromise
6 resolution from the administration that had been
7 composed the week before. So we had two compromised
8 resolutions from the administration, one from the
9 science department at the high school, and, of course,
10 then we had the motion that Mr. Buckingham read.

11 And as Dr. Nilsen -- Dr. Nilsen handed these to
12 us. And we were starting out the door, and Mr.
13 Buckingham said, let's get this thing done. We know
14 what we've got to do. This is taking too long already.
15 Words to that effect. I'm not absolutely certain of the
16 wording. But that was the gist of it.

17 And I looked at him. I said, well, see you on
18 the other side, Bill, and we went out the door.

19 Q. Now at the board meeting, do you recall there
20 being a public comment section, portion of the meeting?

21 A. Prior to the meeting? There always was. I don't
22 recall it.

23 Q. I'm talking about at the October 18th board
24 meeting, do you recall the public comments section?

25 A. Well, okay, we have on the agenda a section

1 listed for public comment. I don't recall what occurred
2 during that. I had also known that during discussion on
3 agenda items, the public is allowed to join in the
4 discussion. That, I remember very vividly. But I don't
5 recall the public comment section at the beginning. I
6 know we had one. We always did. But I don't recall it.

7 Q. So you recall members of the public speaking up?

8 A. Yes, during the discussion on the intelligent
9 design motion, yes.

10 Q. Approximately how many members of the public
11 spoke up?

12 A. I couldn't tell you. I know for a fact that
13 Bertha Spahr and Jennifer Miller both spoke several
14 times.

15 Q. Were they science teachers at the high school?

16 A. Yes, yes, they were science teachers at the high
17 school.

18 Q. Of the people that spoke up, were -- could you
19 say most were in favor or against or could you
20 approximate?

21 A. The ones I recall were against. I can't say -- I
22 really haven't given this a -- this part of it a great
23 he'll deal of thought. I remember the science teachers
24 very vividly because they were making points that I felt
25 needed to be made. I'm not going to say that no one

1 from the public didn't come up and -- I can't remember.

2 Q. Now did any of the board members who supported
3 the proposed change to the biology curriculum explain
4 their reasons for supporting the proposed change at that
5 meeting on October 18th?

6 A. Not to my recollection, no.

7 Q. Do you know if any of the members who supported
8 the proposed change explained their reasons for
9 supporting it at any other meetings?

10 A. Absolutely not. Of that, I'm absolutely certain.

11 Q. Who made the motion to introduce to change the
12 biology curriculum?

13 A. Mr. Buckingham.

14 Q. And tell us happened to that motion?

15 A. He made the motion. It was seconded. And Mr.
16 Weinrich immediately proposed to amend the motion. And
17 under parliamentary procedure, the most recent motion
18 must always be voted on first. So we immediately went
19 to voting on Mr. Weinrich's proposal, which was to table
20 Mr. Buckingham's motion for further study.

21 And during that discussion period, I proposed
22 that we form a committee of teachers, administrators,
23 members of the public, and I volunteered to be on the
24 committee, you know, to look into this, because I viewed
25 this as a radical change with long-term ramifications,

1 and I felt we were being way too hasty. We had, in
2 fact, violated about every policy we had on this issue.

3 Q. Tell us happened to that motion to table?

4 A. It was voted down, 6 to 3.

5 Q. Were there any other motions other than the
6 motion that had been made by Mr. Buckingham?

7 A. There were at least a dozen, possibly more than
8 that. Mr. Weinrich proposed one amendment to the motion
9 after another. He began by introducing -- I believe the
10 first he introduced was the teachers' compromise
11 resolution. That was voted down, 6-3.

12 He brought in both the administrations. They
13 were both voted down, 6-3. He proposed motions of his
14 own. But all of his motions, while they essentially
15 said, everything that was in Mr. -- the motion that Mr.
16 Buckingham had read, the critical difference was, and
17 this was true of all the compromises, none of them
18 mentioned the words intelligent design.

19 And Mr. Weinrich, I could tell what he was doing.
20 He was essentially composing their resolution as
21 word-for-word as he could without using those two words.
22 And they were all voted down 6 to 3.

23 Q. Did any of the motions introduced that evening
24 ultimately pass?

25 A. Two of them.

1 Q. Explain that.

2 A. I introduced -- at one point, the teachers were
3 arguing -- Mrs. Shaberlig or Mrs. Miller, I can't
4 remember which, were arguing that, by placing mention of
5 intelligent design in the instructional curriculum,
6 which is what they were doing, they felt -- past
7 precedent was, anything in the instructional curriculum,
8 it was reserved strictly for subjects that are to be
9 taught.

10 And their objection to these words was, you're
11 putting it in the instructional curriculum. We feel
12 that this obligates us to teach it. And Mrs. Geesey
13 and, I believe, Mr. Buckingham also both said, that's
14 not what we -- we're not asking you to teach it. But
15 they would not take it out of the instructional
16 curriculum either.

17 So I lifted a phrase from the teachers'
18 resolution, the last -- I forget the rest of the
19 resolution. But the last words were, note: Origins of
20 life will not be taught. And I proposed a motion that
21 these words be lifted from the teachers' and drafted
22 onto Mr. Buckingham's, and that passed.

23 Q. And can you tell us who voted in favor of that
24 and who voted against?

25 A. No, I can't. I only know that it passed. It may

1 very well have been unanimous. I don't know. But it
2 certainly passed.

3 Q. But, I mean, the ultimate resolution to approve
4 Mr. Buckingham's motion?

5 A. The only other resolution that passed was the
6 amended -- it was Mr. Buckingham's resolution plus the
7 note: Origins of life will not be taught. And Mr.
8 Bonsell, Mr. Buckingham, Mrs. Cleaver, Mrs. Geesey, Mrs.
9 Yingling, and Mrs. Harkins all voted for it. And Mr.
10 Weinrich, Mrs. Brown, and myself, voted against it.

11 Q. Now you're referring to the ultimate motion?

12 A. The ultimate motion, yeah. That's the other
13 motion that passed that night.

14 Q. Your wife resigned at that meeting?

15 A. That was the very next order of business. She
16 asked for the permission to speak from the chair, and
17 she read her letter of resignation.

18 Q. Did you resign as well?

19 A. The moment she was finished, I also asked for
20 permission to speak from the chair, and I resigned as
21 well.

22 Q. And can you tell us why you resigned?

23 A. Yes. I felt that the board had vastly
24 overstepped any promises it had ever made to the voters
25 of the district. They had never run on this issue.

1 This had never been a campaign issue.

2 I felt that they had violated their own
3 precedent. We had never ever passed anything without
4 going over the possible financial costs in great and
5 excruciating detail on that board. And I'm talking
6 about things as small as selling the right to hang signs
7 on our high school football field. That occasioned
8 about a two and a half hour -- no, it wasn't that long.
9 It seemed like it -- a very long debate over what was a
10 couple hundred dollars.

11 This board watched every nickel like a hawk. And
12 on this one occasion, they did not want to hear any talk
13 about possible costs, because I brought up the
14 possibility, I said, if we are sued, and if we lose, we
15 will have to pay the other side's legal costs. Have you
16 thought about that?

17 And Mr. Buckingham looked at me and said, it's a
18 good thing you weren't around during the American
19 Revolution, Mr. Brown, or we'd still have a queen.
20 And --

21 Q. And that was said at the meeting on October the
22 18th?

23 A. Yes, it was.

24 Q. Following the meeting on October the 18th, did
25 you have a conversation with Mr. Bonsell, this is after

1 the meeting on October 18th, about the curriculum change
2 that actually had been passed?

3 A. Yes. It was, I believe, in November.

4 Q. Where did it take place?

5 A. At one of the -- at one of their meetings.

6 Q. Can you tell us what he said to you on that
7 occasion?

8 A. We got to discussing what had happened, why I had
9 resigned. And he was not very happy with me. And I
10 accepted that. I wasn't real happy either. And he
11 stated to me that, you know, I know -- how did he put
12 that? I know part of this by heart, and then that leads
13 into it -- I know Bill made a lot of stupid statements,
14 he said, but I thought you were on board with us.

15 MR. HARVEY: No further questions.

16 THE COURT: All right. Thank you, Mr.
17 Harvey. Cross examination, Mr. Gillen.

18 MR. GILLEN: Thank you, Your Honor.

19 **CROSS EXAMINATION**

20 BY MR. GILLEN:

21 Q. Good afternoon, Mr. Brown.

22 A. Good afternoon.

23 Q. Mr. Brown, Pat Gillen. I took your deposition.
24 I'm an attorney for the Defendants. I'm going to ask
25 you a few questions about your testimony here today, if

1 I can get organized?

2 A. Do I have to wait? I guess I do.

3 THE COURT: Sadly for you, you do.

4 BY MR. GILLEN:

5 Q. I believe at the beginning of your testimony, you
6 recounted a conversation that you had with Mr. -- or you
7 had with Mr. Bonsell when he was running with your wife
8 for office, is that correct?

9 A. Yes.

10 Q. And your recollection is that this conversation
11 took place, and he expressed an interest in getting the
12 Bible in school and teaching creationism, is that
13 correct?

14 A. Yes.

15 Q. And your wife ran with them nonetheless, correct?

16 A. Yes.

17 Q. Your wife has testified to an October or November
18 2003 board meeting which had to do with the pledge. Do
19 you recall that meeting?

20 A. Yes.

21 Q. I don't want to be unfair to you here, but there
22 was -- the issue at hand that produced -- there was an
23 issue at hand that produced some public controversy,
24 correct?

25 A. Are you talking about the pledge? Yes, a great

1 deal of public controversy.

2 Q. That issue was whether or not the board should
3 pass the resolution in favor of keeping the phrase under
4 God in the pledge, correct?

5 A. I wouldn't use the word resolution. What they
6 wanted to pass -- they wanted to draft a letter of
7 support to send to the Supreme Court, which was at that
8 time considering hearing a challenge to it. I don't
9 know if I'd call it a resolution or not. But that was
10 the gist of it.

11 They were going to draft a letter of support for
12 leaving the pledge as it is now and send it to the
13 Supreme Court.

14 Q. Now you took a position in public against that,
15 however you'd like to phrase it, resolution or --

16 A. You can call it a resolution. That's fine with
17 me. I don't care.

18 Q. Let's do that, because I believe it was a
19 resolution to send the letter?

20 A. You're the lawyer, not me. I'm not going to
21 argue with you.

22 Q. And you voted against that, didn't you?

23 A. Yes, I did. To be technically, I abstained. I
24 did not vote against it. I abstained.

25 Q. The reason you abstained is, as you testified in

1 your deposition, because you felt you had a message from
2 on high that you shouldn't support that resolution,
3 correct?

4 A. Yes, that's the way I would put it, yes.

5 Q. So in that particular occasion, you took a
6 position on a matter that the board was addressing
7 because you thought you had a message from on high?

8 A. I woke up the Sunday before that vote with the
9 phrase, one nation under Allah, in my head and I
10 couldn't get rid of it. I could not get rid of it. And
11 I had to teach a Sunday School lesson that day, which is
12 not the best way to go into teaching a Sunday school
13 lesson.

14 And it was that afternoon I came to the
15 conclusion that, you know, because I always told my
16 Sunday School class, when in doubt, go with the Golden
17 Rule. I was like, oh, one nation under Allah. I would
18 not want to have to stand up there and say, one nation
19 under Allah.

20 So maybe somebody else does not want to have to
21 stand up there and say, one nation under God. And under
22 the Golden Rule, I felt compelled to say, I can't
23 support this. I'm opting out.

24 Q. And as you understand the Golden Rule, that's a
25 religious teaching of Jesus Christ, correct?

1 A. It is, yes.

2 Q. Now on that resolution, Sheila Harkins also
3 abstained with you, correct?

4 A. Yes, she did.

5 Q. There's been some testimony about the input from
6 the public, and I think that you've testified in your
7 deposition that you found Barrie Callahan irritating, is
8 that correct?

9 A. I did make that statement, yes.

10 Q. And you said that, at times in her appearance to
11 the board, she was politically motivated?

12 A. That was my opinion, yes.

13 Q. There's been testimony today about some comments
14 made by an individual named Max Pell at a board meeting
15 touching on the selection of the Biology text. Did you
16 testify on that today?

17 A. Testify? You mean comment?

18 Q. Concerning that exchange?

19 A. At the very end of the conversation, I felt that
20 Max Pell had been kind of ganged up on. As I said, Noel
21 Weinrich, Alan Bonsell, and Bill Buckingham were
22 literally taking turns arguing with him. And what I
23 stated -- at the end of the discussion, I leaned into
24 the mic and said, of course, the full board will take a
25 vote on this Biology textbook.

1 And I just -- I felt sorry for the guy. But
2 also, I was stating a fact, you know. Mr. Buckingham
3 would not make the decision himself whether we bought
4 the book or not. It would be the full board that would
5 do it. So I stated that as sort of -- because I felt
6 sorry for Mr. Pell, that's why.

7 Q. And what you were trying to convey to Mr. Pell is
8 that the committee chairman might recommend a course of
9 action, but it's the board that has to approve the final
10 course of action, correct?

11 A. Yes.

12 Q. And you testified that you suggested intelligent
13 design at one point, correct?

14 A. Yes, I did.

15 Q. And at the time you did that, you thought you
16 were on safe legal ground, correct?

17 A. Yes.

18 Q. You've also testified that you believe Alan
19 Bonsell was skeptical about some of the claims made for
20 evolutionary theory?

21 A. Skeptical, yeah, that's a good word.

22 Q. But you said that you saw his objections as
23 reasonable objections concerning things such as gaps in
24 the fossil record, etc.?

25 A. Yes. From the reasonable, from the standpoint,

1 they did not cross the line into endorsing the -- the
2 truth of the matter is, I had forgotten, when I gave my
3 deposition, I had forgotten some of the statements that
4 Alan made. I better get -- I'm going to have to clear
5 that up now.

6 After my deposition -- well, as you know from --
7 you conducted that deposition. There were a number of
8 subjects where I was very vague and very fuzzy, and that
9 has continued -- I'll tell you, my greatest fear is, I'm
10 going to wake up tomorrow morning, assuming we get done
11 today, and realize I forgot something else important.
12 And I'm not kidding.

13 I've been feeling that way for weeks. I had
14 literally forgotten Alan's endorsement of creationism
15 when I gave my deposition. It was not until I saw that
16 document the other week, the one that was referred to
17 earlier. And I was like, and my initial reaction was,
18 would Alan say that? And then I started to think. It
19 was like, wait a minute. And then I remembered that,
20 you know, the 50/50, the half and half, creationism,
21 evolution, and it came back to me.

22 So I would have to stand here and tell you, yes,
23 my deposition that I gave you was partial. It was not
24 complete. It was not full. I did not recall that when
25 I gave that to you.

1 Q. And that's fair enough, Mr. Brown. I took your
2 deposition on May 17th, 2005, correct?

3 A. I'm taking your word for the date.

4 Q. And let me -- I can represent that to you. If
5 you want, I'll --

6 A. That's quite all right. I'm willing to take your
7 word for it.

8 Q. Okay. And at that time, you didn't remember
9 those comments on the part of Mr. Bonsell, correct?

10 A. That's correct.

11 Q. In fact, in your deposition, you testified that
12 you had no reason to believe that Mr. Bonsell's support
13 for intelligent design theory was based on anything
14 other than the fact that he saw it as two scientific
15 theories, correct? Do you recall that?

16 A. No, I don't recall saying. I'm not going to say,
17 I didn't, but I don't recall it.

18 Q. Well, as you sit here today, do you believe that
19 Mr. Bonsell's support for intelligent design theory was
20 because he basically believed they were two scientific
21 theories? I mean, you supported intelligent design?

22 A. Well, until I learned a little bit more about it,
23 I did, yes. I can't -- I cannot state for a fact one
24 way or the other. I will say this. I know Alan did not
25 believe in evolution. What his opinions on intelligent

1 design are, I do not know. I don't. I have no idea why
2 he supports intelligent design. I don't know.

3 Q. Okay. Now we have had testimony about the
4 purchase of Of Pandas and People, correct?

5 A. Yes.

6 Q. And you testified to the manner in which Mr.
7 Buckingham tried to tie together the purchase of the
8 Biology text recommended by the science faculty, Miller
9 and Levine Biology, with the purchase of Of Pandas and
10 People, correct?

11 A. Yes.

12 Q. But Mr. Bonsell was against that use of
13 taxpayers' money, is that correct?

14 A. Yes, he was.

15 Q. And on August 2nd, 2004, when Bill Buckingham
16 tried to link purchase of the Biology text to purchase
17 of the text Of Pandas, Mr. Bonsell did not capitulate to
18 Mr. Buckingham's demand, is that correct?

19 A. That is correct.

20 Q. And you testified that, although Alan Bonsell
21 might have had some interest in creationism, he wouldn't
22 violate the law. He's not a bomb thrower. Is that
23 correct?

24 A. I testified that that was my opinion of Mr.
25 Bonsell. And I would certainly hope that I am correct

1 in my opinion.

2 Q. You remember, you said that Sheila Harkins
3 discussed the book Of Pandas and People with you?

4 A. Yes.

5 Q. And she expressed the notion that it would be
6 good to teach another theory of evolution to you?

7 A. I don't remember testifying to that. She may
8 have said that. I'm not sure. I know she -- I remember
9 her saying, read the book, read the book, and we should
10 buy the book. But I'm not positive that she said it --
11 she may have. I don't remember at this point in time.

12 Q. I understand.

13 MR. GILLEN: Your Honor, may I approach the
14 witness?

15 THE COURT: You may.

16 THE WITNESS: I'm sorry. What page do you
17 want me to look on?

18 BY MR. GILLEN:

19 Q. I'll get you there.

20 A. I have a feeling I'm about to make a liar of
21 myself.

22 Q. That's not true. You said you weren't quite
23 sure. Page 123.

24 A. Okay, 123. She wants to buy a book we don't
25 need. She has been fighting --

1 Q. Hold on there, Mr. Brown, if you would, please.

2 A. You're going to read it for me. Good. Go ahead.

3 THE COURT: Mr. Brown, hang on. He'll get a
4 question on the floor.

5 THE WITNESS: Okay.

6 THE COURT: Better not to anticipate what
7 Mr. Gillen is going to do. He'll guide you through
8 this.

9 BY MR. GILLEN:

10 Q. First thing I'd ask you to do, Mr. Brown, is look
11 at line 22 there. There's a question on line 20. That
12 will give you some context.

13 A. But doggone it. What was the thing she wanted to
14 do that caused me to tell her we will get sued? Okay.
15 That's not very helpful. What was the thing she wanted
16 to do that caused me to tell -- can we go to the next
17 page?

18 Q. You can indeed. My question to you is, Mrs.
19 Harkins told you that she thought the book of Pandas was
20 useful because it presented another theory of evolution,
21 is that correct, Mr. Brown?

22 A. I -- okay. Reading this, I do remember that she
23 said she wanted to purchase it as a supplemental text.
24 That has come back to me, yes. My memory is not the
25 world's best.

1 Q. If you look at page 123, line 7?

2 A. You're going to do this to me again. Line 7.
3 Okay. Apparently, I remembered it then. She said it
4 presented another theory of evolution. Fine. There it
5 is. I said it. I must have remembered it then. And
6 again, this is how memories work. Sometimes they need
7 jogging. I'm sorry.

8 Q. Understood. But your testimony that day was
9 truthful and accurate, to the best of your knowledge?

10 A. Yes. It is today, too. It may not seem that
11 way, but it is.

12 Q. And during this conversation, you told Mrs.
13 Harkins that you believed that Mr. Buckingham's comments
14 had poisoned the well, so to speak, is that correct?

15 A. Yes, I did use the phrase poisoned.

16 Q. Mrs. Harkins told you, Bill isn't the whole
17 board?

18 A. Yes, she did say that.

19 Q. In that way, she echoed the same sentiments you
20 expressed to Mr. Pell in 2004 when the Biology text was
21 discussed, is that correct?

22 A. I guess you could put it that way, yes.

23 Q. Now subsequently, Dr. Nilsen told the board that
24 the teachers had agreed to use the -- to have the book
25 placed in the classroom as a reference text, is that

1 correct, Mr. Brown?

2 A. Yes, that was -- in fact, it was carried in the
3 local papers when they made that statement.

4 Q. And at the time, it was regarded as a reasonable
5 resolution of --

6 A. We got accolades from both papers for having
7 reached a compromise acceptable to all sides, yes.

8 Q. Now there's been testimony concerning the October
9 18th, 2004, board meeting at which the board adopted the
10 curriculum at issue in this litigation. And I want to
11 ask you, do you recall, as you sit here today, Mr.
12 Bonsell calling you prior to that meeting?

13 A. Okay. Mr. Bonsell -- all right. I don't recall
14 Mr. Bonsell calling. I remember my wife telling me that
15 Mr. Bonsell had called and wanted me to call him back.
16 And I remember thinking -- well, I asked her why. And
17 one of the things she brought up was, well, Alan asked
18 whether you supported voting for Sheila Harkins for
19 president or voting for him for a second consecutive
20 term as president.

21 I was like, I do not want to get into this. And
22 also, I had been over to his house not too long ago --
23 not too long prior to that to look at an electrical job
24 that he had coming up, and that was also an issue.
25 There were a couple of issues. Nothing was, you know, I

1 don't recall that there was anything in there that would
2 really be pertinent to this issue, but then I didn't
3 recall Sheila saying that it presented another theory of
4 evolution, did I?

5 So I don't know how good my memory is. But these
6 are the things I'm remembering as I say this. I
7 remember it was about the upcoming election for board
8 president when I did not want to get into it. It was
9 about an electrical job. And at this point, Casey and I
10 were both seriously considering resigning the board, and
11 I thought, if I'm quitting the board, I do not want to
12 be in Alan's house. That would just be too creepy for
13 me. I couldn't deal with it. At any rate, I did not
14 call him back, no.

15 Q. You didn't call him back, correct?

16 A. I did not call him back.

17 Q. So you don't really know why he called you, do
18 you?

19 A. Other than what my wife told me, no.

20 Q. Now you said that during the discussion at the
21 October 18th, 2004, board meeting, the teachers took the
22 position that they did not teach origins of life,
23 correct?

24 A. Yes.

25 Q. And you've testified that there was a question

1 posed by the teachers concerning whether the change to
2 the curriculum would require them to teach origins of
3 life, correct?

4 A. They didn't pose it as a question. They flat out
5 stated that it was their opinion that, by placing it in
6 the instructional curriculum, they were -- I believe
7 they used the word compelled -- compelled to teach it.

8 Q. And Mr. Bonsell said, we are not going to require
9 you to teach it, correct?

10 A. I don't remember -- I can't say he didn't. I
11 remember Heather Geesey definitely, and I believe Mr.
12 Buckingham. I don't recall Alan saying it, but he may
13 have. I don't remember.

14 Q. You remember Mr. Buckingham saying, we're not
15 going to require you to teach it, correct?

16 A. I'm pretty certain he did, yes. I'm absolutely
17 certain of Mrs. Geesey. She said it more than once.

18 Q. And your testimony here today is that you moved
19 the note onto the board curriculum version for the
20 purpose of ensuring that the teachers would not be
21 required to teach origins of life?

22 A. Yes.

23 Q. And when you did that, it was your understanding
24 that intelligent design addressess the origins of life?

25 A. I would have to say that intelligent design

1 doesn't really address much but the origins of life.

2 That's my understanding of it.

3 Q. And so your purpose was, by appending the note,
4 as you recall, to the curriculum, your goal was to
5 ensure that, on the one hand, it was referenced in the
6 curriculum, and on the other hand, teachers would not be
7 required to teach it, is that correct?

8 A. I wasn't absolutely certain it would -- the truth
9 of the matter is, the board can always change their
10 motion. But my intention at the time was to put that up
11 as a firewall in case it ever came up in the future,
12 that you would have that safeguard, because quite
13 frankly, I didn't -- by that point in time, I did not
14 take Mr. Buckingham's word for anything anymore.

15 Q. So in so doing, Mr. Brown, the net result was to
16 ensure that students would be made aware of intelligent
17 design, but it would not be taught, is that correct?
18 That was your goal?

19 A. No, that was not my goal. My goal was that we
20 drop the subject completely. This was what I viewed at
21 the time as at least something to prevent it being
22 taught. I would not say my goal was to make them aware
23 of it. At that point, I didn't want anything to do with
24 it. My goal would have been for the -- to convince a
25 couple of board members, or even one to be exact, to

1 vote against the motion altogether. That would have
2 been my real goal.

3 Q. One of the objections you had is that you thought
4 the curriculum change would complicate contract
5 negotiations with the teachers?

6 A. Yes. As a school board member, I viewed the
7 teachers' contract as vastly more important than what we
8 said in biology class. All politics is local.

9 Q. I wanted to take an opportunity to show you
10 something, Mr. Brown. Just if you would -- may I
11 approach, Your Honor?

12 THE COURT: You may.

13 BY MR. GILLEN:

14 Q. I misspoke, Mr. Brown. 64, please.

15 A. I was going to say, this is after I was off the
16 board. This isn't going to be much help.

17 Q. It's not going to be that easy. I'm sorry, Your
18 Honor, this is not more high tech, but this is
19 Defendant's Exhibit 65 -- 64.

20 A. Okay. This would be the agenda for that night.
21 What specifically, because this is basically what came
22 in our board packet that night?

23 Q. Good question, Mr. Brown. If you page through
24 Exhibit 64, you'll see in the lower right-hand corner,
25 page stamp numbers. I'd ask you to turn to the page of

1 Exhibit 64 that has the number 159 stamped in the lower
2 right-hand corner.

3 A. My goodness. Either I remembered -- okay. I
4 stand corrected. I thought I had made that motion. I
5 had suggested it. And I honestly thought that I had,
6 you know, that I had made the motion. It says here, Mr.
7 Bonsell offered the amendment. I seconded it.

8 Q. That's what I wanted to ask you, Mr. Brown. Not
9 taking anything away from you.

10 A. I remember making -- suggesting that we could do
11 that, and it just followed in my mind that I had
12 actually made the motion. I'm sorry. I'm trying to
13 take it away from Alan here. Sorry.

14 Q. For the record, we're referring to that portion
15 of Exhibit 64, page stamped 159, with the number 6,
16 correct, Mr. Brown?

17 A. Yes.

18 Q. It's the heading 6, and it says, Mr. Bonsell
19 offered an amendment, which was seconded by Mr. Brown to
20 add the note from Exhibit X1C as follows, the origin of
21 life is not taught to Exhibit X1A planned instruction
22 curriculum guide, correct?

23 A. Yes.

24 Q. And if you look down that page, Mr. Brown, I
25 believe it will indicate that that motion passed

1 unanimously?

2 A. Okay. Yeah.

3 Q. Do you see that?

4 A. Yeah.

5 Q. Am I correct?

6 A. Yes.

7 Q. Thank you.

8 A. I am sorry. I've been hogging credit for
9 introducing that motion. I honestly thought I had
10 because I had proposed that we do that when they kept
11 saying, we don't want to talk -- but the actual motion,
12 no, it wasn't mine.

13 Q. So on the actual night of the curriculum change
14 when it was being contemplated by the board, you
15 suggested a change that was designed to ensure the
16 teachers' concerns were laid and the addendum to the
17 curriculum would ensure that they didn't have to change
18 origins of life?

19 A. Right.

20 Q. Intelligent design, correct?

21 A. I did not state this. This is only what I was
22 thinking when I proposed it. I'm not going to say Alan
23 was thinking the same way I was. I have no idea. But
24 Alan did indeed propose it, and I seconded it, and there
25 it is. And that is my mistake. I am sorry.

1 Q. That's quite all right. There's nothing to be
2 sorry for. No further questions, Your Honor.

3 MR. HARVEY: Just a couple questions, Your
4 Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. HARVEY:

7 Q. Mr. Brown, please take a moment to look at what
8 is in your notebook and marked as P-21?

9 A. This same book?

10 MR. HARVEY: Can I help him, Your Honor?

11 THE COURT: You may. You may approach.

12 THE WITNESS: Oh, please. I need all I can
13 get. All right. This book? I got more material up
14 here -- yes. All right.

15 BY MR. HARVEY:

16 Q. Is this the document that you looked at that
17 refreshed your recollection --

18 A. Yes.

19 Q. -- about what Mr. Bonsell said at the board
20 retreat on January the 9th of 2002?

21 A. Yes.

22 Q. And did you see this document that's been marked
23 as P-21 at your deposition that Mr. Gillen took in this
24 case?

25 A. No. No, I did not.

1 Q. Were you aware that it had not even been produced
2 by the Defendants in this case at that time?

3 A. No, I have no knowledge of that whatsoever.

4 Q. Please turn to the next document in here, P-25.

5 A. Yes.

6 Q. Is this the document that you looked at that
7 refreshed your recollection about what Mr. Bonsell said
8 on March the 26th of 2003, at the board retreat?

9 A. Yes.

10 Q. Were you -- did you see this document at your
11 deposition that Mr. Gillen conducted in May of this
12 year?

13 A. No.

14 Q. Were you aware that it wasn't even produced by
15 the Defendants as of that date?

16 A. Well, I'm aware that it wasn't -- well, it
17 certainly wasn't produced to me.

18 Q. And one final question. I forgot to ask you,
19 what you do for a living? You made a reference to doing
20 an electrical job. So is it safe to conclude you're an
21 electrician?

22 A. I like to think so. I haven't burned any houses
23 down yet.

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

1 THE COURT: Are you sure?

2 MR. GILLEN: Mr. Brown, I find a very
3 interesting character, but I will not question him
4 further today.

5 THE COURT: Mr. Brown, contrary to your
6 worst fears, that ends your testimony, and you may step
7 down. There is an end. We have for Mr. Brown one
8 exhibit that was referred to that I'm aware of. That
9 would be by Mr. Gillen on cross examination. That is
10 D-64, which would be the school board minutes of October
11 18, '04, and specifically, page 159 within D-64.

12 MR. GILLEN: Your Honor, I move the
13 admission of the entire document. I believe we
14 stipulated to it, didn't we, Eric?

15 MR. ROTHSCHILD: I believe that's right.

16 THE COURT: D-64 then is admitted in its
17 entirety. And we will take the Plaintiffs' next
18 witness.

19 MR. HARVEY: Your Honor, Plaintiffs call for
20 their next witness, Mr. Fred Callahan.

21 THE COURT: All right.

22 Whereupon,

23 **FREDERICK B. CALLAHAN**

24 having been duly sworn, testified as follows:

25 THE WITNESS: Frederick B. Callahan.

1 F-R-E-D-E-R-I-C-K. B. C-A-L-L-A-H-A-N.

2 THE COURT: You may proceed.

3 **DIRECT EXAMINATION**

4 BY MR. HARVEY:

5 Q. Mr. Callahan, are you a Plaintiff in this case?

6 A. Yes.

7 Q. Where do you live?

8 A. 2830 Skytop Trail, Dover.

9 Q. Are you married to Aralene Barrie Callahan?

10 A. I am.

11 Q. How long have you lived in Dover?

12 A. 29 years.

13 Q. And we learned about your children when your wife
14 testified. You were in the courtroom at that point?

15 A. Yes.

16 Q. And one of your children is now in the 11th grade
17 at Dover High School, isn't that correct?

18 A. She is.

19 Q. That's your daughter, Katie?

20 A. Yes.

21 Q. Please just tell us briefly what your education
22 is?

23 A. I graduated from West York High School in 1966
24 and Ursinus College in 1970.

25 Q. And could you please tell us what you do for a

1 living?

2 A. I work for Colony Papers, Incorporated, in York.

3 Q. And what do you do?

4 A. I'm the president of it.

5 Q. And do you recall attending a board meeting of
6 the Dover Area School District on June the 14th of 2004?

7 A. I do.

8 Q. Why did you attend that meeting?

9 A. My wife told me to attend it.

10 Q. Had you previously attended meetings of the Dover
11 Area School District board of directors?

12 A. I had intermittently. I wasn't a regular
13 attender, but I would go periodically.

14 Q. Do you remember the -- whether that meeting had a
15 lot or -- how many people were at that meeting?

16 A. It was quite crowded. Many meetings that I
17 attended were very sparsely attended where you might
18 have 20 people. But the room was really fairly crowded.
19 I'm not much of a very skilled, I don't think, at
20 estimating crowds, but I would say there were at least
21 100 people there, maybe 150.

22 Q. Do you remember Charlotte Buckingham speaking at
23 that meeting?

24 A. Yes, I do.

25 Q. Was that toward the beginning of the meeting or

1 end of the meeting?

2 A. I think she was the first speaker under public
3 comment.

4 Q. Do you remember what she said?

5 A. It was a -- well, as it was testified to earlier,
6 it was a real religious polemic. It went on for -- I
7 would have guessed, for 15, 20 minutes. It was
8 tantamount to a religious sermon, I would say.

9 Q. Now do you remember Mr. Buckingham making
10 something akin to an apology at that meeting?

11 A. My memory is that he did that just prior to her
12 speaking. There had been a meeting June 7th, and I
13 guess he said some things at that meeting that he felt
14 compelled to address. And he made, I guess what you
15 would say was, an apology. He did not retract anything
16 he said, but he essentially apologized if he hurt
17 anyone's feelings, as I recall.

18 Q. Do you remember Mr. Buckingham saying anything in
19 that meeting about somebody dying 2000 years ago?

20 A. I do. And my memory was that it was in the
21 context of that apology. But I think I testified in my
22 deposition, and I'll stand by the testimony in my
23 deposition, that it would have been in response to
24 something that was said after his wife spoke by someone
25 else. It was, but, yeah, that was sort of a wake-up

1 call.

2 Q. Do you remember -- can you tell us the words or
3 approximate words he said?

4 A. Well, as testified to earlier, and I couldn't
5 swear to the exact wording, but it was, 2000 years ago,
6 a man died on a cross. Shouldn't we stand up for him
7 now? Or something very close to that.

8 Q. Do you remember -- do you know who Bertha Spahr
9 is?

10 A. Yes.

11 Q. Who's Bertha Spahr?

12 A. She is head of the science department, I believe.

13 Q. Do you remember her speaking at that meeting?

14 A. Yes, I do.

15 Q. She spoke in support of the Biology book which
16 had been proposed. She gave it the endorsement of, I
17 guess, the science department. I remember there was a
18 committee or something that she was speaking for. It
19 wasn't just her endorsement.

20 And she said that the committee felt that it
21 handled evolution in a very sensitive way, that it was
22 used widely in the country. I think her words were that
23 it was the most single most widely used book in the
24 country. She made some reference to the minimal number
25 of pages that were devoted to evolution.

1 And then she also made some parting comment about
2 just suggesting to the board that there were certain
3 requirements that she hoped the board wouldn't -- would
4 remember the legal requirements that they had to address
5 as far as the state standards and something of that
6 sort.

7 Q. Did she talk to -- did she say anything about it
8 being illegal to teach creationism?

9 A. Well, again, I don't remember -- I don't recall
10 her exact words, but she gave a cautionary note to the
11 board, which was clearly directed in that vein. And
12 again, I don't remember her exact words, but --

13 Q. Do you remember if Mr. Buckingham said anything
14 in response?

15 A. He did. It was very -- it was, where did you get
16 your law degree? It was a very short, pointed barb, and
17 it was, as I recall, it was -- and you have to -- she
18 said this with much defense to the board. You know,
19 this was not a -- her comments were done in a very
20 respectful manner.

21 And I thought his rejoinder to her was just a --
22 I'd have to categorize it as being a very gratuitous
23 slap in the face. As I recall, there was an audible
24 gasp from the crowd. It was just totally uncalled for,
25 I think.

1 Q. Do you remember somebody from Americans United
2 for Separation of Church and State speaking at that
3 meeting?

4 A. Yes. I couldn't tell you the gentleman's name.
5 I don't think I'd recognize him if he was in the
6 courtroom. I remember he was dressed very casually. I
7 can remember sitting there when he worked his way to the
8 microphone. Quite candidly, I was expecting him to --
9 this is a terrible thing to admit -- but I was expecting
10 him to give an endorsement to the board's actions. I
11 don't know. He just -- his demeanor.

12 Q. Do you remember what he said, not exact words,
13 but approximately what he said?

14 A. He was pretty straight forward. He said he
15 represented the group that you cited, and suggested to
16 the board that the direction they were going as far as
17 pursuing creationism, that his organization, he felt
18 certain, would be seeing them in court if they continued
19 down that path.

20 Q. Now do you remember a Reverend Warren Eshbach
21 speaking?

22 A. I do.

23 Q. Who is Reverend Eshbach?

24 A. He is a -- I understand he's a retired minister,
25 I believe, of the United Church of the Brethren, I

1 believe it is. His son, I came to find, was a teacher
2 in the biology department. I'd have to say, from people
3 that I do know that know him, he's a very well respected
4 member of the community.

5 Q. Do you remember what he said at that meeting?

6 A. He really struck a very conciliatory tone and, I
7 think, coming from a minister, his position was one
8 that, I think, was very interesting and revealing. He
9 felt that the course that the board was following was
10 misguided, that science and faith are two different
11 matters, that science was for the science classroom, and
12 that faith was for church and family, and that there was
13 a difference between the two.

14 And he felt that the board should be mindful of
15 the divide that it was creating in the community, the
16 upset that it was causing, and, you know, the board
17 should remember that it was to serve the entire
18 community. It was a very conciliatory, reaching out
19 sort of message, I thought.

20 Q. Let's turn to a different subject. And that is,
21 let's go forward in time a little bit to October the
22 18th of 2004. Did you attend a board meeting on that
23 date?

24 A. I did.

25 Q. Did you stay for the whole meeting?

1 A. No, I didn't.

2 Q. Tell us, were there people who spoke during that
3 meeting?

4 A. Yes.

5 Q. And?

6 A. Well, I spoke fairly early on, and then I left.
7 So, yeah.

8 Q. How many people spoke before you?

9 A. I think one or two. And quite honestly, I can't
10 -- they may have been -- I know, I'm certain Reverend
11 Eshbach was either following me in line or he spoke
12 before me. But it was some of the same people, I think,
13 that spoke the night of the 14th.

14 Q. Can you tell us what you said to the board on
15 October the 18th?

16 A. What did I say? There are a couple of points, I
17 guess, I wanted to make. I had been doing some reading
18 in the interim trying to familiarize myself a little bit
19 more with the issues. And I suggested to them that my
20 view, intelligent design clearly strayed into the area
21 of religion, that it was a thinly veiled, very thinly
22 veiled attempt to bring religion into the science
23 classroom, that it met none of the standard criteria for
24 science, you know, that scientific method of discovery,
25 and that it might prove to be a very slippery slope.

1 I can recall suggesting to them that, asking how
2 they were going to handle that discussion. And at this
3 point, I don't think the policy hadn't been written yet
4 where there would be no discussion. But I suggested to
5 them that any discussion outside of the normal religious
6 bounds positing an intelligent designer, the discussion
7 could very easily get to the nature of that intelligent
8 designer, probably make a pretty strong case, that if
9 there is an intelligent designer, the intelligent
10 designer might not be a force for good, it might be a
11 force for evil.

12 There's a tremendous amount of ill that happens
13 in this world. And, you know, were they prepared to get
14 into that kind of discussion in a biology classroom
15 about the nature of this intelligent designer? And I
16 suggested to them, I guess, I don't know if I used these
17 words, but I thought that they were crossing a bright
18 line that should be reserved for science.

19 I also then, I guess, got into the whole issue
20 with the liability potential. I made note of the fact
21 that they had stopped having their solicitor attend
22 meetings. And as Mr. Brown testified to, they were
23 doing all sorts of things that -- to trim the budget.
24 One of the things they had done sometime within the past
25 preceding 24 months is, they stopped having the

1 solicitor come to their board meetings.

2 One of the things I suggested to them was, I
3 thought they were being a penny wise and a pound
4 foolish, that here they were traveling a route that
5 quite potentially was fraught with peril, and they were
6 cutting out field trips to save a few thousand dollars a
7 year.

8 And I just couldn't see the logic in this. And I
9 can recall asking them if they had gotten an opinion
10 from their solicitor. I believe I was told that they
11 had, but they didn't produce any information as far as
12 what that was.

13 And then finally, I had asked Mr. Buckingham, as
14 I recall, because there had been some reports that he
15 had contacted some organization outside of the state and
16 gotten some guarantees of legal support, and I can
17 recall -- how did this go? I said something to the
18 effect, and he wasn't forthcoming at that point, willing
19 to admit that he had contacted anyone.

20 And I made mention of, you know, this California
21 organization that's going to support your -- the school
22 in this legal endeavor. And he jumped in and said, no,
23 they're from Michigan, which I thought was kind of
24 revealing. He wasn't willing to admit it, just, you
25 know, but -- but I asked him if they had anything in

1 writing, if the board had any contractual written
2 document from this organization underwriting the costs.
3 He indicated that they didn't.

4 And at that point, I believe I suggested that, I
5 didn't think the board was fulfilling its fiduciary
6 duties and was violating its oath. And I think at that
7 time, I was told that I was out of order, and there were
8 gavels banging. And I decided that would be a good time
9 to leave. So I did.

10 Q. So you didn't hear anything that happened at the
11 meeting after that?

12 A. No, other than what I read in the paper.

13 MR. HARVEY: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 BY MR. HARVEY:

17 Q. Matt, could you put up P-127? Mr. Callahan, I
18 hand you what has been marked as P-127. It's the
19 newsletter that was sent out by the Dover Area School
20 District on or about February the 5th. Have you seen
21 this before?

22 A. Yes.

23 Q. Did you receive this at your home?

24 A. Yes.

25 Q. And do you recall your reaction to this document?

1 A. Well, again, I thought it was -- there was
2 obviously some cost involved in this. I went to the
3 extent of, between my wife and myself, asking some
4 questions and trying to determine how much the school
5 district spent on sending this out.

6 I think the figure that was reported was
7 \$10,000.00. In light of some of the other things I
8 said, I thought this was kind of revealing that the
9 school could come up with a fairly significant amount of
10 money to send this out.

11 The statement itself, I guess, the text of what
12 they were going to, or are reading to the students, I
13 thought was very revealing. It seems to me that they've
14 -- my understanding of Darwin's theory, and I've done
15 some reading. You know, I'm not a scientist.

16 But I guess one of the things that has impelled
17 me to become a Plaintiff is that, Darwin's theory, from
18 what I can determine, is -- well, it's been described to
19 me as not one of the leading theories of science --

20 MR. MUISE: I object. I believe this is
21 answered in the narrative. I think the question was
22 regarding the newsletter.

23 THE COURT: I think we are getting into a
24 narrative answer. I'll sustain the objection. Why
25 don't you get a question on the floor, Mr. Harvey?

1 BY MR. HARVEY:

2 Q. Let's go to our final line of questions. Mr.
3 Callahan, do you feel that, as a Plaintiff in this case,
4 you've been harmed by the actions of the Dover Area
5 School District and its Board of Directors?

6 A. Yes.

7 Q. And can you tell us how you've been harmed?

8 A. I think it goes to the heart of the complaint.
9 It's a constitutional issue. I'm a tax payer in Dover.
10 I'm a citizen of Dover. I'm a citizen of this country.
11 I think the heart of my complaint, my wife's complaint,
12 is that, this is just thinly veiled religion. There's
13 no question about that in our minds.

14 If you were to substitute where it says,
15 intelligent design, the word, creationism, which, in my
16 mind, it is, there would be no question that this would
17 be a violation of the First Amendment. I've come to
18 accept the fact that we're in the minority view on this.

19 You know, I've read the polls. I think, you
20 know, a lot of people feel that this should be, that
21 this should be in, that it doesn't cross the line.
22 There are a lot of people that don't care. But I do
23 care. It crosses my line.

24 And, you know, I've been -- there have been
25 letters written about the Plaintiffs. We've been called

1 atheists, which we're not. I don't think that matters
2 to the Court, but we're not. We're said to be
3 intolerant of other views.

4 Well, what am I supposed to tolerate? A small
5 encroachment on my First Amendment rights? Well, I'm
6 not going to. I think this is clear what these people
7 have done. And it outrages me.

8 MR. HARVEY: No further questions, Your
9 Honor.

10 THE COURT: All right. Thank you, Mr.
11 Harvey. Cross-examine, Mr. Muise.

12 **CROSS EXAMINATION**

13 BY MR. MUISE:

14 Q. Good afternoon, Mr. Callahan.

15 A. Good afternoon.

16 Q. I believe you testified that you have a child
17 that's in the 11th grade?

18 A. Yes.

19 Q. Is that your youngest child?

20 A. Yes, she is.

21 Q. And you have a -- other children as well,
22 correct?

23 A. Yes, a son and daughter.

24 Q. And they have moved beyond the Dover Area School
25 District?

1 A. Yes.

2 Q. Now your child that's in the 11th grade was never
3 in the 9th grade biology class when this curriculum was
4 -- since this curriculum has been adopted, is that
5 correct?

6 A. No, she wasn't.

7 Q. So you have children past the point where they
8 will have that statement read to them in the biology
9 class, is that correct?

10 A. Yes.

11 Q. Now, sir, you're a Plaintiff in this case because
12 your wife wanted you to be, correct?

13 A. Well, that's probably overstretching, but family
14 harmony is always important. She certainly didn't have
15 to twist my arm. When this came about, and I was aware
16 of the issues and followed it, and given the
17 opportunity, I said, absolutely, let's do it.

18 Q. I believe, in your deposition, you testified it
19 was her initiative that brought you in as a Plaintiff in
20 this case?

21 A. Yes.

22 Q. I believe you testified, your role, as you stated
23 in your deposition, was to say, quote, yes, okay, honey?

24 A. Well, that was -- I thought that that was
25 relating to going to the meeting on June 14th, but I may

1 be mistaken about that.

2 Q. You said you went to that June 14th meeting at
3 the strong suggestion of your wife, correct?

4 A. Yes, she was out of town and couldn't be there.

5 Q. Now I want to get your -- strike that. You were
6 in court today for the testimony that occurred, correct?
7 In court today, you heard some of the testimony that was
8 given?

9 A. Yes.

10 Q. And there was a lot of testimony about
11 discussions at meetings and various accusations that
12 were made regarding the issues that are essential in
13 this case regarding the policy, correct?

14 A. Yes.

15 Q. Now I want to get your understanding of what
16 though is actually going to be taking place in the 9th
17 grade biology class at Dover High School, okay? Is it
18 your understanding, sir, that Darwin's theory of
19 evolution will be taught pursuant to the state academics
20 standards in the 9th grade biology course at Dover High
21 School?

22 A. Yes.

23 Q. And that is regardless of what was passed on the
24 October 18th resolution?

25 A. Yes.

1 Q. Do you have any objection to the way they're
2 going to teach Darwin's theory of evolution, as you
3 understand it?

4 A. No.

5 Q. Sir, is it your understanding that the school
6 district is a standards driven district, so they have to
7 follow the Pennsylvania State Academic Standards for
8 their curriculum?

9 A. Yes.

10 Q. And is it your understanding that the
11 Pennsylvania State Academic Standards require students
12 to take a standardized test of which evolution is a
13 part?

14 A. Yes.

15 Q. And is it your understanding that the class will
16 focus its time on preparing students for a student based
17 assessment in order to pass those standardized tests?

18 A. Yes.

19 Q. And is it your understanding that that student
20 based assessment does not include material on
21 intelligent design?

22 A. Yes.

23 Q. So the students will not be tested on any aspect
24 or component of intelligent design, correct?

25 A. Correct.

1 Q. Now this June 14th meeting that you went to at
2 the urging of your wife, you discussed some of the
3 controversy that was taking place, the statements and so
4 forth, correct?

5 A. Right.

6 Q. And that was in the context of the adoption of
7 the Biology textbook for this 9th grade biology class?

8 A. It was in the context of the statements that had
9 been made on the 7th, that much of the discussion was
10 related to the possibility that had been raised of
11 including creationism in the curriculum.

12 Q. And that came in the context of adopting a new
13 biology textbook, correct?

14 A. Right.

15 Q. The biology textbook that was being discussed at
16 the June 14th meeting that you were at was the 2002
17 version of the Miller and Levine Biology book, correct?

18 A. I couldn't tell you which edition it was.

19 Q. Now isn't it true, your wife told you that the
20 biology book that the teachers had recommended was one
21 that was one of the most widely used biology textbooks
22 in the country?

23 A. No, that information was from Bert Spahr. She
24 delivered that in her message to the board that night.

25 Q. But it was your understanding though that this

1 biology textbook was one that was widely used?

2 A. Yeah, well, she said that, I think, in her
3 address to the board.

4 Q. Do you have any reason to doubt her?

5 A. No.

6 Q. It was your understanding that the biology
7 department felt that this was a very appropriate book
8 and would be beneficial for the school to purchase?

9 A. Yes.

10 Q. And again, this book is what created all this
11 controversy and those statements that you had testified
12 to on direct, correct?

13 A. Well -- repeat that question. I'm not sure.

14 Q. I'm sorry for not being so precise. One of the
15 questions I had asked you about the controversy
16 centering on the adoption of a biology text, and I
17 believe you concurred that that was an accurate
18 assessment?

19 A. Well, I think the -- I just want to clarify this
20 and make sure that I'm understood here. I don't think
21 the controversy was on the Miller book. Perhaps from
22 Buckingham's standpoint. The controversy really arose
23 from the standpoint of why the book wasn't being
24 approved, that creationism was being considered. I
25 mean, I think that was the controversy.

1 I don't think there was a tremendous amount of
2 controversy at all really on the part of the public as
3 far as the Miller book itself, the Miller and Levine
4 book. I don't think that's where the controversy really
5 resided.

6 Q. But the connection that you make, and the reason
7 for the controversy, is that it's connected to what was
8 contained in that Miller book?

9 A. No, I don't think the controversy -- well, I
10 guess we're -- maybe we're saying the same thing. I
11 think the controversy was in Buckingham's comments
12 regarding the book and what he wanted to see in the
13 book. There was no controversy that I could detect on
14 the part of the general public on the book itself; maybe
15 that it hadn't been approved, but not relating to the
16 book itself.

17 Q. Is it fair to say that the controversy was
18 related to Mr. Buckingham's objections to that book?

19 A. Yes.

20 Q. Now is it your understanding that the book that
21 was actually adopted and purchased by the school
22 district was the later version of that same book that
23 Mr. Buckingham objected to?

24 A. That's my understanding.

25 Q. So this controversy, which was related to Mr.

1 Buckingham's statements of this book, the result was,
2 that extra book was the one that the school board voted
3 for and spent public money and purchased, correct?

4 A. Right.

5 Q. Sir, is it your understanding that that book, the
6 Biology book covers the theory of evolution consistent
7 with its status in the scientific community?

8 A. No. Actually, I think the message that I gleaned
9 from Bert Spahr's comments was that it was a relatively
10 mild treatment of evolution. And I -- I don't know.
11 You know, if Darwin's theory is the overarching critical
12 theory that it is, you know, maybe we're making -- what
13 I got from it is, we were making an accommodation to
14 people's religious beliefs by the very selection of that
15 book.

16 Q. If Dr. Ken Miller, the author of that book, said
17 that that book represented a theory of evolution
18 consistent with the standing in the scientific
19 community, would you have any reason to doubt that?

20 A. No. He'd certainly know better than I would.
21 But he's selling books in Texas, too.

22 Q. Now the textbook, Of Pandas and People, is it
23 your understanding that that book was actually placed in
24 the library at Dover High School?

25 A. Yes.

1 Q. It was never made a required text for the
2 students?

3 A. Not as it ended up, no.

4 Q. And it was put in the library so that students
5 could look at it if the student chose to do so?

6 A. That was the understanding that I got, yes.

7 Q. Now this statement which was created in
8 conjunction with this policy resolution and adopted on
9 October 18th of 2004, is it your understanding that
10 there was a statement in January, but then it was
11 modified in June? Are you aware of that?

12 A. I had heard some comment about that.

13 Q. Is it your understanding that the statement was
14 modified in June to reflect the fact that Of Pandas and
15 People was put in the library along with other resources
16 addressing intelligent design?

17 A. I believe I heard some commentary about that.

18 Q. Is it your understanding that some of these other
19 resources include books that are highly critical of
20 intelligent design?

21 A. I am not aware of what those books are.

22 Q. Now your wife was a board member at one time,
23 correct?

24 A. She was.

25 Q. And she lost her election in November of 2003?

1 A. Yes.

2 Q. Now when you went to this June 14th, 2004,
3 meeting that you testified about, that was the first
4 time that you heard that term intelligent design, is
5 that correct?

6 A. Possibly. I'm in some doubt as to the first
7 board meeting that I heard that term at. I know it
8 wasn't in common useage at that June 14th meeting. That
9 may have been the first time I heard it. I -- I very
10 well could have heard it at that meeting. It was not a
11 subject -- it wasn't as well understood and hadn't been
12 disseminated to the public at that point as it was by
13 the October 18th meeting.

14 Q. Sir, you testified in your deposition that the
15 first time you were introduced to that term was at that
16 meeting. Would you have any reason to doubt?

17 A. No.

18 Q. At this meeting, Mr. Buckingham didn't speak to
19 the teaching of creationism?

20 A. Pardon me?

21 Q. At this meeting, the June 14th meeting, Mr.
22 Buckingham didn't speak to the teaching of creationism?

23 A. I don't think he did from the standpoint -- well,
24 he may have. I don't recall, because what he said in
25 his opening comments was directed back to what he said

1 on June 7th. And I wasn't at the June 7th meeting, but
2 it was reported, I believe, that he had spoke to it
3 then. I will say that he didn't retract anything.

4 I remember specifically that he did not make any
5 comment in his opening remarks denying what was printed
6 in the paper or negating, you know, any of the
7 information that was published in the media.

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

10 THE COURT: You may.

11 BY MR. MUISE:

12 Q. Sir, I'm handing you a copy of your deposition
13 that was given on March 30th of 2005. And I'd ask you,
14 please, to turn to page 23, starting on line 22, and
15 read through line 25, the question, then your answer.

16 A. You want me to read the question?

17 Q. Yes, please?

18 A. How about creationism? Did Buckingham speak to
19 the teaching of creationism or the legality of teaching
20 creationism? I can't say that he did at that meeting.

21 Q. Is that a truthful answer you gave on March 30th,
22 2005?

23 A. Well, again, I think what I just said doesn't
24 conflict with that. My understanding was that he was --
25 and having read the papers, and I can't pretend I

1 didn't, I was pretty vigilant about reading the papers.
2 He didn't deny anything that was reported that he had
3 said at the previous meeting.

4 And I think at the previous meeting, it was
5 reported that he did speak about creationism. So did he
6 specifically say that? No, I can't say that he did.
7 But he apologized for hurting people's feelings
8 basically on the 14th.

9 Q. So he didn't speak to the teaching of creationism
10 or the legality of teaching creationism at the meeting
11 you attended?

12 A. I can't recall that he did. I'm not saying that
13 he didn't. I just can't recall.

14 Q. That's something you don't remember?

15 A. No.

16 Q. Sir, we've heard throughout testimony today, and
17 I believe yesterday as well, about a young man by the
18 name of Max Pell who gave some speech at the June 7th
19 meeting, I believe?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes.

23 Q. Now Max Pell, he's a friend of your son, is that
24 correct?

25 A. Yes.

1 Q. Sir, you were at a meeting in which, at a board
2 meeting in which Mr. Alan Bonsell corrected one of the
3 other board members who used the term creationism in one
4 of their discussions, correct?

5 A. Right.

6 Q. And he interrupted that board member and
7 corrected him and said, we're talking about intelligent
8 design not creationism, correct?

9 A. My memory is, he didn't interrupt him. They had
10 made some brief comment regarding the importance of
11 creationism, and finished their comment, and he said,
12 it's intelligent design. And, you know --

13 Q. Sir, now the -- your understanding is that the
14 Pandas book was donated to the school, correct?

15 A. That's my understanding.

16 Q. It was announced at a board meeting by Dr. Rich
17 Nilsen?

18 A. I'm not sure I was at the board meeting when he
19 announced that, but I read that in the paper, yes.

20 Q. It was your understanding, sir, that the board
21 was wrestling with what to do with this book, trying to
22 research some sort of a middle ground, is that correct?

23 A. Yes, uh-huh.

24 Q. Is that a yes?

25 A. Yes. I'm sorry.

1 Q. Now the biology department didn't want to use it
2 as a textbook for the class, correct?

3 A. That was my understanding, yes.

4 Q. And the school board and the school ultimately
5 decided just to put the book in the library for students
6 to access it if they wanted to, correct?

7 A. Yes.

8 Q. Sir, apart from those comments that we just
9 discussed with Mr. Bonsell correcting one of the board
10 members who used the term creationism that we just
11 discussed, you've also heard Mr. Bonsell make claims in
12 support of intelligent design as being a scientific
13 theory, correct?

14 A. Yes.

15 Q. When the issue came up regarding intelligent
16 design in the curriculum, Mr. Bonsell was talking about
17 intelligent design as a scientific theory?

18 A. I should say that I, to my recollection, and
19 looking at news articles and adgends, I don't think I
20 attended a meeting between June 14th and October 18th,
21 so much of that discussion, I got through the
22 newspapers. I wasn't there firsthand.

23 Q. But you heard Mr. Bonsell making comments
24 regarding intelligent design as a scientific theory?

25 A. Well, there's a time that I just cited that --

1 well, actually, he didn't make a comment. I mean, he
2 just corrected the speaker. I don't recall what his
3 comment was or whether he, in fact, made any comment
4 about it at the time.

5 Q. Sir, if you would turn to your deposition, page
6 40, please?

7 A. Okay.

8 Q. If you will read starting from line 24 on page 40
9 and continuing onto page 41 down to line 6?

10 A. I'm sorry. What line do you want me to start?

11 Q. I'm sorry, page 40, line 24?

12 A. Okay. I see what you are inferring there. What
13 about Alan Bonsell? When that issue came up about
14 incorporating intelligent design into the curriculum,
15 did he speak to that specifically? His purpose? What
16 was he after?

17 Q. Then your answer?

18 A. I think Alan was much more in message as far as
19 staying on the intelligent design and alternate
20 scientific theory. I think he was much more disciplined
21 in his remarks.

22 Q. Was that a truthful answer you gave, sir?

23 A. Yes, but I don't -- I did answer truthfully, as
24 far as I recall, but I don't -- I do remember that
25 meeting where -- and that was my point, I think, that I

1 was making, was that he was -- he struck me as that one
2 incident where he just, you know, wanted to make clear
3 he was talking about intelligent design.

4 Q. Now, sir, your objections to intelligent design
5 are based on your impression that intelligent design is
6 religion, that it's talking about God, is that correct?

7 A. Yes, absolutely.

8 Q. And I think you indicated that it's sort of a
9 euphemism for God, is that correct?

10 A. Yes.

11 Q. Is your opinion based on your impression that
12 intelligent design requires the action of a supernatural
13 creator?

14 A. Yes, very much.

15 Q. Sir, if you were shown that intelligent design
16 does not require the action of a supernatural creator
17 and that it was based on empirical observable facts
18 about biology, would you be willing to change your
19 opinion?

20 A. Yes, if it followed the normal methodology that
21 has been established for every other scientific theory,
22 the rigors that they have to follow to be accepted by
23 the scientific community, you know, I see no reason why
24 not to accept it. But --

25 Q. In your judgment, would that be relying on

1 empirical observable facts about biology to support your
2 theory?

3 A. I am not a scientist. If, if there are issues
4 that intelligent design puts forth that follow all the
5 established dictates of the scientific and biology
6 communities and are accepted by the scholars, if you
7 will, in the field, why wouldn't they be accepted?

8 Q. Now, sir, I believe you said it was the June 14th
9 meeting when a member from the Americans United for
10 Separation of Church and State had threatened legal
11 action against the school board?

12 A. Yes.

13 Q. And you said you spoke to the school board about
14 liability issues, about the potential for getting sued?

15 A. Well, I didn't speak at that meeting.

16 Q. There was at least one meeting that you addressed
17 the school board?

18 A. That was the October 18th meeting.

19 Q. So now you're a Plaintiff in this case?

20 A. Yes.

21 Q. Sort of self-fulfilling prophecy?

22 A. If you will, I guess it is.

23 Q. Sir, you testified about the newsletter that you
24 received from the school district explaining the actions
25 that they had taken regarding the curriculum change,

1 correct?

2 A. Yes.

3 Q. And in that newsletter, it also had an article
4 from Senator Santorum indicating his support for the
5 what the school district had done?

6 A. Right.

7 Q. Now isn't it true that the school district sends
8 out four newsletters a year as far as their routine
9 business?

10 A. I have no idea. They may do that. I get a lot
11 of mail at home, and I don't look at every piece.

12 Q. I believe, when you were testifying about harm,
13 there was some letters that had been written, I guess,
14 derogatory towards the Plaintiffs, in your perception?

15 A. There have been many letters, columns.

16 Q. Any of those letters by board members?

17 A. I think so. I couldn't tell you specifically.
18 There have been a tremendous number of letters in the
19 York press, letters about the issue.

20 Q. Letters about the issue?

21 A. Um-hum.

22 Q. Is that a yes?

23 A. Yes.

24 Q. These meetings that you were testifying to, I
25 believe you indicated, there were large crowds?

1 A. Yeah. The 14th was more. I think it was
2 actually more crowded than the 18th of October. But,
3 yeah.

4 Q. Is it fair to say, the crowd interaction created
5 sort of a frenzy atmosphere at these meetings?

6 A. Well, I don't know if frenzy -- well, you know,
7 that's a subjective term. I guess, to some, it would be
8 possibly frenzy. At times, it was, you know, ooh's and
9 aah's. And, you know, it was certainly a meeting that
10 would not put you to sleep.

11 Q. And at the June 14th meeting, I believe you
12 testified on direct, that Mr. Buckingham read a
13 statement?

14 A. It was -- it's my memory that he read it. It was
15 a short statement. And my recollection is that he -- it
16 pretty much opened the meeting before public comment.

17 Q. It's your understanding this was an effort on his
18 part to try to make some peace?

19 A. Yes, sir.

20 MR. MUISE: No further questions, Your
21 Honor.

22 THE COURT: Any redirect?

23 MR. HARVEY: No, Your Honor.

24 THE COURT: Mr. Callahan, we thank you. You
25 may step down. That takes us, I think, comfortably to

1 the end of our planned trial day. Counsel, do you have
2 anything else before we adjourn?

3 MR. HARVEY: No, Your Honor. P-137 is in
4 evidence.

5 MR. GILLEN: No, Your Honor. Thank you.

6 THE COURT: All right. I'll remind
7 everyone, we will start our day at 12:30 p.m. tomorrow
8 and have what, I think, promises to be a somewhat
9 abbreviated afternoon session at that time. With that,
10 we will wish you all a pleasant good evening, and we'll
11 be in recess until 12:30 tomorrow. Thank you all.

12 (Whereupon, the proceeding adjourned at
13 4:58 p.m.)

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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.

/s/ Wendy C. Yinger

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