

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
3 HARRISBURG DIVISION

3 TAMMY KITZMILLER, et al., : CASE NO.
4 Plaintiffs : 4:04-CV-02688
5 vs. :
6 DOVER SCHOOL DISTRICT, : Harrisburg, PA
7 Defendant : 27 October 2005
8: 9:00 a.m.

7 TRANSCRIPT OF CIVIL BENCH TRIAL PROCEEDINGS
8 TRIAL DAY 16, MORNING SESSION
9 BEFORE THE HONORABLE JOHN E. JONES, III
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Plaintiffs:

13 Eric J. Rothschild, Esq.
14 Thomas B. Schmidt, III, Esq.
15 Stephen G. Harvey, Esq.
16 Pepper Hamilton, L.L.P.
17 3000 Two Logan Square
18 18th & Arch Streets
19 Philadelphia, PA 19103-2799
20 (215) 380-1992

21 For the Defendant:

22 Patrick Gillen, Esq.
23 Robert J. Muise, Esq.
24 Richard Thompson, Esq.
25 The Thomas More Law Center
26 24 Franklin Lloyd Wright Drive
27 P.O. Box 393
28 Ann Arbor, MI 48106
29 (734) 930-7145

30 Court Reporter:

31 Wesley J. Armstrong, RMR
32 Official Court Reporter
33 U.S. Courthouse
34 228 Walnut Street
35 Harrisburg, PA 17108
36 (717) 542-5569

1 APPEARANCES (Continued)

2 For the American Civil Liberties Union:

3 Witold J. Walczak, Esq.
4 American Civil Liberties Union
5 313 Atwood Street
6 Pittsburgh, PA 15213
7 (412) 681-7864

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X
Kitzmiller vs. Dover Schools
4:04-CV-2688
Trial Day 16, Morning Session
27 October 2005

PROCEEDINGS

Page

DEFENSE WITNESSES

Dr. William Buckingham:
Direct as on cross by Mr. Harvey 4

1 P R O C E E D I N G S

2 THE COURT: Be seated, please. All right,
3 we're back in session, and we are still in the
4 defense case obviously.

5 MR. HARVEY: Your Honor. By arrangement and
6 agreement with plaintiff's counsel -- excuse me,
7 defendant's counsel, the plaintiffs are now
8 going to call in their case in chief out of turn
9 Mr. William Buckingham as on cross.

10 THE COURT: All right. We'll have to
11 remember to take up Dr. Nilsen's exhibits at
12 some point. Perhaps we'll do that today later,
13 but no reason to do it now.

14 MR. GILLEN: Thank you, Your Honor.

15 (William Buckingham was called to testify
16 and was sworn by the courtroom deputy.)

17 COURTROOM DEPUTY: State and spell your full
18 name for the record, please.

19 THE WITNESS: William Buckingham.

20 W-I-L-L-I-A-M, B-U-C-K-I-N-G-H-A-M.

21 DIRECT EXAMINATION AS ON CROSS

22 BY MR. HARVEY:

1 23 Q. Good morning, Mr. Buckingham.

24 A. Good morning.

2 25 Q. You will recall that I took your deposition

1 on January the 3rd of this year, do you recall
2 that?

3 A. Yes.

3 4 Q. And I took that deposition to help prepare
5 to make a decision about whether to seek a
6 temporary restraining order. Did you understand
7 that at the time?

8 A. I don't know that I knew that at the time.
9 I came to know that as a result of the second
10 deposition.

4 11 Q. And now have you had a chance to prepare
12 for today's session by meeting with your
13 counsel?

14 A. Yes, I did.

5 15 Q. And when did you do that?

16 A. Yesterday.

6 17 Q. And was anyone present other than your
18 counsel?

19 A. No.

7 20 Q. I'd like to just give you some documents
21 that we might be looking at today. Your Honor,
22 may I approach the witness?

23 THE COURT: You may.

24 (Brief pause.)

8 25 Q. I've just actually given you three things.

1 A copy of your deposition taken on January 3rd,
2 2005. You have that in front of you, right?

3 A. Yes.

9 4 Q. I also gave you a copy of the transcript of
5 your deposition taken on March the 31st, 2005?

6 A. That's correct.

10 7 Q. And I also gave you a notebook of some
8 documents that we may look at. I took the
9 liberty of putting them in a notebook so we
10 can keep things straight. Now, Mr. Buckingham,
11 are you aware that the theory of evolution
12 teaches among other things that there is
13 evolution within a species?

14 A. Yes.

11 15 Q. And that's not inconsistent with your
16 personal beliefs, is it, Mr. Buckingham?

17 A. No, it's not.

12 18 Q. And are you aware that the theory of
19 evolution also teaches that man and other
20 species evolved from a common ancestor?

21 A. Yes.

13 22 Q. And that is inconsistent with your personal
23 beliefs, isn't that right?

24 A. Yes, it is.

14 25 Q. And you believe that evolution has

1 antireligious implications, don't you?

2 A. I don't think it's good -- I don't think
3 there's parts of it that are good science. I
4 won't say they're antireligious. I just think
5 it's not good science.

15 6 Q. Well, Mr. Buckingham, I'd like you to take
7 a look at a document, it's actually not in your
8 binder, but I'll get you a copy of it. Matt,
9 would you pull up Exhibit 127? Your Honor, may
10 I approach?

11 THE COURT: You may.

16 12 Q. Mr. Buckingham, you're now looking at
13 what's been marked as P-127. That's a
14 newsletter that was put out by the Dover
15 area school district, isn't it?

16 A. It seems to be.

17 17 Q. And that was put out in February of 2005?

18 A. Yes.

18 19 Q. Have you seen this before?

20 A. Very briefly. If it was shown to me I
21 didn't read it, but I was aware that it existed.

19 22 Q. Well, if you turn to the second page,
23 please, there's a question there that says,
24 it's in the second column in the middle, it
25 says, "Are there religious implications to

1 the theory of ID?" Do you see that?

2 A. I see it.

20 3 Q. And ID is intelligent design?

4 A. Yes.

21 5 Q. And were you aware that the school district

6 put out this information here under this

7 question about the religious implications to

8 the theory of ID? Were you aware of that?

9 A. As I stated, I didn't read this. I was
10 aware that it existed, but I hadn't read it.

22 11 Q. Fair enough. Now, Mr. Buckingham, when we
12 use, I'd like to just make sure that we're
13 talking about, we'll be talking about some terms
14 today and I want to make sure we're on the same
15 page. The word creationism, you understand that
16 to mean essentially the Book of Genesis?

17 A. Pretty much, yes.

23 18 Q. And you personally believe in a literal
19 reading of the Book of Genesis, isn't that
20 right?

21 A. Yes, I do.

24 22 Q. That's one of the foundations of your
23 faith?

24 A. Yes, it is.

25 25 Q. And in contrast to evolution you believe

1 that the theory of intelligent design is not
2 inconsistent with your personal religious
3 beliefs, isn't that true?

4 A. I'm not an expert on intelligent design.
5 I don't know everything about intelligent
6 design. I just know that it's another
7 scientific theory that we thought would be
8 good to have presented to the students.

26 9 Q. My question is a little different,
10 Mr. Buckingham. I'm asking you it's your
11 understanding that intelligent design is
12 consistent with your personal beliefs,
13 isn't that right?

14 MR. GILLEN: Objection. Foundation.
15 He just said he doesn't have a detailed
16 understanding of intelligent design.

17 THE COURT: Well, the question is different.
18 It has to do with whether it's consistent with
19 his personal belief. So I'll overrule the
20 objection. You can answer the question.

21 A. I can't answer that because I don't know
22 everything about intelligent design. I don't
23 know.

27 24 Q. Mr. Buckingham, I'd like you to turn to a
25 page to the deposition transcript that was taken

1 on January the 3rd, and turn to page 134,
2 please.

3 A. I'm there.

28 4 Q. Line 12, are you there?

5 A. Yes.

29 6 Q. Didn't I ask you the following questions
7 and you give the following answers?

8 "QUESTION: Earlier today I asked you about
9 whether the theory of evolution was inconsistent
10 with your personal religious beliefs, you told
11 me that it was. You don't need to confirm that.
12 Just kind of remember.

13 ANSWER: I think I said it wasn't.

14 QUESTION: No, you definitely said that the
15 theory of evolution was inconsistent with your
16 personal religious beliefs at least to the
17 extent that it taught that life forms were
18 derived from a common ancestor.

19 ANSWER: Origins of life, yes.

20 QUESTION: Is the theory of intelligent
21 design as you phrased it, is that inconsistent
22 with your personal beliefs in any respect?"

23 And then there was an objection, and I
24 said, clarified the question, "Well, in any
25 context," and you said, "In any context no, it's

1 not inconsistent." Do you remember giving that
2 testimony, Mr. Buckingham?

3 A. I remember giving the testimony, but I
4 think in any context I'm sure there's some
5 context of intelligent design that aren't
6 inconsistent with my faith.

30 7 Q. Now, you believe, Mr. Buckingham, that
8 intelligent design is a scientific theory,
9 don't you?

10 A. Yes, I do.

31 11 Q. And I asked you at your deposition on
12 January 3rd if you could tell me what you
13 understand intelligent design to mean, and
14 you told me that you believe that intelligent
15 design teaches that something, molecules or
16 amoeba possibly, evolved into the complexities
17 of life we have now. Isn't that right?

18 A. Without seeing it in front of me I can't
19 tell you if that's right or not, sir.

32 20 Q. Please take a look at page 61 of
21 that same deposition transcript. Actually,
22 Mr. Buckingham, it begins on page 60, line 22.

23 A. I'm there.

33 24 Q. Didn't I ask you the following questions
25 and you gave the following answers?

1 "QUESTION: I'm just trying to understand so
2 we can have a working understanding here of what
3 intelligent design is if we can. Do you have an
4 understanding in very simple terms of what
5 intelligent design stands for? What does it
6 teach?

7 ANSWER: Other than what I've expressed that
8 scientists, a lot of scientists, don't ask me
9 the names, I can't tell you where it came from,
10 a lot of scientists believe that back through
11 time something, molecules, amoeba, whatever,
12 evolved into the complexities of life we have
13 now.

14 QUESTION: That's the theory of intelligent
15 design?

16 ANSWER: You asked me my understanding of
17 it. I'm not a scientist. I can't go into
18 details and debate it with you."

19 Do you remember giving that testimony?

20 A. Yes.

34 21 Q. And at least as of that date, January the
22 3rd, that's all that you understood about what
23 the theory of intelligent design is, isn't that
24 correct?

25 A. Plus the fact that I felt that life was too

1 complex to have randomly happened without a
2 design of some sort.

35 3 Q. That's right. In fact, you told me at your
4 deposition that one of the differences between
5 the theory, that between the theory of evolution
6 and intelligent design is that the theory of
7 evolution according to you teaches that the
8 beginning of man is just happenstance, isn't
9 that correct?

10 A. Can you show me where I said that?

36 11 Q. Sure. Please take a look at pages 20
12 and 21 of that same deposition transcript.

13 A. I'm there.

37 14 Q. If you start on page 20 -- actually to get
15 some context here we really need to go to page
16 18. The question that was asked was, "Let's
17 just take it for a second," and this is line 11
18 on page 18, "But let's just take it for a second
19 that the common ancestor, let's say it's some
20 single celled organism many millions of years
21 ago, and that if that's what the theory of
22 evolution teaches that that's the common
23 ancestor, that that violates or is that
24 inconsistent with your personal religious
25 beliefs?"

1 And then you answered the question over on
2 page 20, you asked me a question, "Ancestor
3 what? Ancestor to what?" And I said, "To all
4 forms of life, including man," and you said,
5 "The question was is that inconsistent with my
6 beliefs?"

7 "QUESTION: Yes.

8 ANSWER: Yes.

9 QUESTION: Why is that inconsistent with
10 your beliefs?

11 ANSWER: Why is that inconsistent with my
12 beliefs?

13 QUESTION: Yes.

14 ANSWER: My faith is founded on the Book of
15 Genesis.

16 QUESTION: Can you explain further?

17 ANSWER: They're different.

18 QUESTION: How are they different?

19 ANSWER: Do you want to do this again?

20 QUESTION: I would like to make sure that
21 the record is clear on this point.

22 ANSWER: Again I'm not a scientist, but it's
23 my understanding that in the theory of evolution
24 where it goes back to the beginning of man it's
25 happenstance, it just happened, and that's

1 inconsistent with my faith."

2 You gave that testimony, didn't you,
3 Mr. Buckingham.

4 A. Yes, when we talked about the origins of
5 life, yes.

38 6 Q. And intelligent design it's your
7 understanding teaches that the beginning
8 of man is not happenstance, correct?

9 A. True.

39 10 Q. According to you, intelligent design
11 expresses an order, as opposed to evolution
12 which talks about chance, correct?

13 A. I would say evolution talks about random
14 chance and intelligent design expresses an
15 order.

40 16 Q. Now, Mr. Buckingham, you're familiar with
17 the book Of Pandas and People, aren't you?

18 A. Somewhat.

41 19 Q. You actually ordered a copy of that book
20 back in the summer of 2004, isn't that right?

21 A. Yes.

42 22 Q. May I approach the witness, Your Honor?

23 THE COURT: You may.

43 24 Q. Mr. Buckingham, I've handed you a copy of
25 the book Of Pandas and People which has been

1 marked as P-11. We might want to refer to it
2 in the next few questions, and my question is do
3 you know whether intelligent design says that
4 life, like a manufactured object, is the result
5 of intelligent shaping of matter? Does
6 intelligent design teach that?

7 A. I've never heard that.

44 8 Q. Well, actually at your deposition you told
9 me that it doesn't teach that, isn't that right?

10 A. If you can show me where I said that.

45 11 Q. Please turn to page 163 and 164 of your
12 transcript. Excuse me, 63 and 64. Page 63,
13 line 19, Mr. Buckingham, the question I asked
14 was:

15 "QUESTION: Mr. Buckingham, does intelligent
16 teach that life, like a manufactured object, is
17 the result of intelligent shaping of matter?

18 ANSWER: I think one, I think intelligent
19 design expresses an order, as opposed to the
20 theory of evolution, which talks about chance.

21 QUESTION: It expresses an order you said?

22 ANSWER: An orderly process to things.

23 QUESTION: Who or what directed that order?

24 ANSWER: I don't know.

25 QUESTION: But my question is, or excuse me,

1 was, does intelligent design teach that life,
2 like a manufactured object, is the result of
3 intelligent shaping of matter?

4 ANSWER: I don't know about shaping. I
5 think there's an order in intelligent design
6 that's not in evolution. Whether it's not,
7 it's shaping, I don't know.

8 QUESTION: Does intelligent design teach
9 that life..."

10 Let's stop right there. So you gave that
11 testimony on January the 1st, isn't that right?

12 A. Yes.

46 13 Q. I'd like you to turn for just a second to
14 in your book Of Pandas and People there to page
15 Roman VII, it's little "vii," it's one of the
16 first pages in the book. Actually it's right
17 under the word "Introduction" on the right-hand
18 side. I'd be happy to come show you.

19 A. I have it.

47 20 Q. Do you have it?

21 A. I have it.

48 22 Q. And Matt, would you please bring that up
23 on the screen and highlight the language in the
24 bottom right-hand corner? This is Of Pandas and
25 People, this book we're looking at, isn't it?

1 A. Yes, it is.

49 2 Q. This is the book the school district
3 approved for the Dover High School, isn't that
4 right?

5 A. As a resource book, yes.

50 6 Q. As a resource book on intelligent design,
7 correct?

8 A. Yes.

51 9 Q. And if you look in the lower right-hand
10 corner it says, "Likewise, proponents of
11 intelligent design throughout history have
12 shared the concept that life, like a
13 manufactured object, is the result of
14 intelligent shaping of matter. Do you see
15 that?

16 A. Yes, I do.

52 17 Q. You didn't even know that Pandas said that,
18 did you?

19 A. I didn't remember that it said that. I
20 don't know if I -- no, I didn't.

53 21 Q. You didn't know that, correct?

22 A. No.

54 23 Q. Now, do you know whether intelligent design
24 teaches that life owes its origins to a master
25 intellect?

1 A. I don't know that.

55 2 Q. Well, at your deposition you told me that
3 intelligent design doesn't teach that life owes
4 its origins to a master intellect, isn't that
5 right?

6 A. That's what I'm saying. I don't know what
7 you said you thought I knew.

56 8 Q. And in fact if you'll turn to page 58 of
9 this book Of Pandas and People, please tell me
10 when you get there.

11 A. I'm there.

57 12 Q. Just above the words "Suggested reading
13 resources" there's the last sentence in the
14 previous section says, "This parallel strongly
15 suggests that life itself owes its origin to a
16 master intellect." Isn't that what Pandas says,
17 Mr. Buckingham?

18 A. That's what that sentence says. I don't
19 know the context it was written in though.

58 20 Q. So but the point is you didn't even know
21 that Pandas and People, the book that was
22 approved for the Dover High School about
23 intelligent design, teaches that life owes
24 its origins to a master intellect? You
25 weren't aware of that, is that right?

1 A. If you're asking me if I memorized this
2 book, I didn't.

59 3 Q. I'm just asking if you were aware of that.
4 You were not aware of that, isn't that true?

5 A. No.

60 6 Q. I'm sorry, you meant to say correct, isn't
7 that right? Correct, you weren't aware of that?

8 A. Could you rephrase the question or ask me
9 the question again?

61 10 Q. Sure. I'm just trying to establish, you
11 weren't aware that Pandas teaches the life
12 owes its origins to a master intellect?

13 A. I didn't remember that being in there, no.

62 14 Q. Okay. Now, does the theory of intelligent
15 design teach that various forms of life began
16 abruptly through an intelligent cause?

17 A. What I know about intelligent design is
18 that it's another scientific theory, and I'm
19 sure there are a lot of things about intelligent
20 design. I don't know.

63 21 Q. Well, let me just re-ask the question. You
22 don't know -- just let me make this clear, you
23 don't know whether or not intelligent design
24 teaches that life, the various forms of life
25 began abruptly through an intelligent agency.

1 You just don't know whether it teaches that or
2 not, isn't that right?

3 A. No, I don't.

64 4 Q. You can put that book down. Now I'd
5 like to ask you some background questions.

6 Mr. Buckingham, you now live in North Carolina?

7 A. Yes, I do.

65 8 Q. And you moved there in August, isn't that
9 right?

10 A. Yes, I moved in July, last week of July.

66 11 Q. And before moving to North Carolina you
12 lived in Dover, Pennsylvania, isn't that right?

13 A. Yes, I did.

67 14 Q. How long did you live in Dover?

15 A. 28 years.

68 16 Q. And at least for the last part of the time
17 you lived in Dover you attended the Harmony
18 Grove Community Church, isn't that right?

19 A. That's true.

69 20 Q. And you at the time just before you left
21 Dover you were a member of the Dover area school
22 district board of directors?

23 A. That's true.

70 24 Q. And you served as a member of the board of
25 directors for between two and three years?

1 A. Yes, sir.

71 2 Q. Your first year on the board was from
3 December 2002 to December of 2003, isn't that
4 right?

5 A. I think I started in February of 2003.

72 6 Q. Okay, so you began in February of 2003, and
7 then you were a school board member for all of
8 2003, isn't that right?

9 A. Yes.

73 10 Q. You were a school board member of all of
11 2004?

12 A. Yes.

74 13 Q. And you were a school board member in 2005
14 until you resigned at or around the time that
15 you moved to North Carolina?

16 A. That's true.

75 17 Q. You are retired?

18 A. Yes.

76 19 Q. And you've been retired since 1989?

20 A. Yes.

77 21 Q. And before your retirement you were a
22 supervisor at the York County prison?

23 A. Yes.

78 24 Q. Your highest level of education is high
25 school?

1 A. I graduated from the Pennsylvania State
2 Police Academy in 1973 and FBI criminal
3 investigation school, and have a paralegal
4 certificate from Penn State.

79 5 Q. And you have three children, all grown?

6 A. Yes.

80 7 Q. And they graduated from, all graduated from
8 Dover High School, but that was a number of
9 years ago?

10 A. That was back in the 80's, early 80's.

81 11 Q. And you are married?

12 A. Yes, I am.

82 13 Q. And your wife's name is Charlotte?

14 A. Yes.

83 15 Q. And during the school board year 2004,
16 during 2004 you were the head of the board
17 curriculum committee, weren't you?

18 A. Yes.

84 19 Q. And who was on the board curriculum
20 committee that year?

21 A. Sheila Harkins, Casey Brown, myself, and
22 Allen Bonsell would be there on occasion as
23 president.

85 24 Q. Mr. Bonsell was a member of the committee
25 ex officio, isn't that right?

1 A. Yes, that would be the term.

86 2 Q. Mr. Bonsell was president of the board that
3 year?

4 A. That's true.

87 5 Q. And Mr. Bonsell appointed you to the
6 position of head of the curriculum committee,
7 isn't that correct?

8 A. Yes, he did.

88 9 Q. Now, do you recall that in 2003 the board
10 approved funds for a new biology textbook?

11 A. Yes.

89 12 Q. And do you also recall that even though
13 the board approved the funds, it didn't actually
14 approve the purchase of the textbook in 2003?

15 A. That's true.

90 16 Q. And do you remember that in the 2003 and
17 2004 school year there weren't enough biology
18 textbooks for the students to each take one home
19 at night?

20 A. I know there were books in the classroom.

21 Whether or not they were taken home I don't

22 know.

91 23 Q. Well, you knew that there were not enough
24 for the students to take that -- strike that.
25 You knew that there were books in the classroom,

1 but the reason they were in the classroom is
2 because there weren't enough for the students
3 to take them home, isn't that correct?

4 A. Back at the time I was new on the board and
5 I didn't have sufficient background to really
6 have that knowledge.

92 7 Q. Now, do you remember in early 2004 you
8 reviewed the biology textbook that was being
9 used in the Dover High School? Do you remember
10 that?

11 A. That was being used?

93 12 Q. Yes.

13 A. I don't remember that. I remember
14 reviewing the one they wanted to purchase.
15 I don't remember reviewing the one they were
16 using at the time.

94 17 Q. Well, I tell you what. Let's take a look
18 in your notebook at what's P-132. Matt, could
19 you please bring that up?

20 A. Could you give me the number again, please?

95 21 Q. It's 132.

22 A. Yes, sir, I have it.

96 23 Q. P-132 is a handwritten page that has the
24 Bates number, actually two pages have the Bates
25 number 39, and then if you look at the second

1 page it has the Bates number 210. Do you see
2 that?

3 A. I might be at the wrong part.

97 4 Q. If you need --

5 A. Mine doesn't have a handwritten like yours
6 does.

98 7 Q. Well, I tell you what then. You do have
8 P-132 in front of you?

9 A. Yes.

99 10 Q. That has the Bates page number 39 on it?

11 A. Yes.

100 12 Q. That's actually a document that you
13 created?

14 A. Yes.

101 15 Q. And that's a list of references in the
16 Miller and Levine 2004 biology textbook, is
17 that right?

18 A. It's a 2002 book.

102 19 Q. That is a 2002 book, right?

20 A. Yes.

103 21 Q. You went through and you made a list of the
22 aspects of the book that concerned you?

23 A. I made a list of aspects of the book that
24 talked about one theory and didn't mention any
25 other scientific theories.

104 1 Q. Okay. And the aspect of the book that
2 mentioned one theory and didn't mention any
3 other theory all concerned evolution, isn't
4 that right?

5 A. It concerned Darwin's theory of evolution,
6 yes.

105 7 Q. And among other things if you look at this
8 document it says page 386, summary of Darwin's
9 theory, do you see that?

10 A. Yes, I do.

106 11 Q. You were concerned that there was a summary
12 of Darwin's theory in the book, isn't that
13 right?

14 A. I wasn't, I don't think I was concerned
15 that there was a summary of Darwin's theory in
16 the book. I was concerned that the only thing
17 in the book was Darwin's theory.

107 18 Q. Is it fair to say that you have a problem
19 with the scientific theory of evolution being
20 presented to the students at the Dover High
21 School in biology class?

22 A. I don't have a problem with it being
23 presented to the students as long as it's being
24 presented along with the gaps in the theories of
25 evolution.

108 1 Q. So I'm talking now not at your present
2 views, because they're not relevant, but I want
3 to know, I'm talking about back in 2004 your
4 point of view was that you had a problem with
5 intelligent -- excuse me, the theory of
6 evolution being present alone. You wanted it
7 to be presented with something else, correct?

8 A. I knew there were other scientific theories
9 available, and I thought it would be better for
10 the students if other scientific theories, along
11 with Darwin, were presented.

109 12 Q. So in other words you wanted to make sure
13 that there were other theories presented
14 alongside of the theory of evolution, correct?

15 A. Other scientific theories, true.

110 16 Q. Now, do you recall a meeting of the board
17 curriculum committee in January of 2004?

18 A. Yes.

111 19 Q. And do you recall who attended that
20 meeting?

21 A. I can't tell you for sure. I know it was
22 Sheila Harkins, Casey Brown, myself, Mr. Baksa.
23 I don't know if the science teachers were there
24 at that time or not. Might have been.

112 25 Q. Well, do you recall a discussion about the

1 teachers watching a video called Icons of
2 Evolution?

3 A. A discussion about it? I know I was told
4 they agreed to watch it.

113 5 Q. Okay. That was, you were told in or around
6 the time that curriculum meeting in the spring
7 of 2004 that the teachers had agreed to watch
8 the video Icons of Evolution?

9 A. Yes.

114 10 Q. Now, that video was something that that you
11 obtained from The Discovery Institute, isn't
12 that right?

13 A. I didn't actually obtain it. They just
14 sent it to me. I didn't ask for it.

115 15 Q. But in any event the video that the teaches
16 were watching was the video that came to you
17 from The Discovery Institute, correct?

18 A. Yes.

116 19 Q. And do you remember at that curriculum --
20 by the way, do you know the date of the
21 curriculum committee meeting that we're talking
22 about in the spring of 2004?

23 A. Not off the top of my head.

117 24 Q. It was sometime in June?

25 A. I think it was.

118 1 Q. Do you remember a discussion at a
2 curriculum committee meeting in the spring
3 of 2004 with Bertha Spahr about a mural of
4 evolution?

5 A. Yes, I do.

119 6 Q. And do you know a man named Larry Reeser?

7 A. Yes, I do.

120 8 Q. Mr. Reeser was somebody that you knew from
9 your church, isn't that right?

10 A. I knew who he was, but I won't say I was
11 real close to him. I just knew who he was and
12 I knew after I went onto the board that he
13 worked for the school.

121 14 Q. But you knew him through your church,
15 correct?

16 A. That's one of the ways I know him, correct.

122 17 Q. Because he was a member along with you?

18 A. Right.

123 19 Q. Now, do you remember at that curriculum, at
20 the meeting with the teachers now, we're talking
21 about in the spring of 2004, expressing a
22 concern that students were being taught that
23 man came from monkeys?

24 A. I do remember expressing a concern that the
25 origins of life were taught to the point that

1 yes, that man descended from monkeys.

124 2 Q. And you were concerned that the biology
3 curriculum might be teaching the students that
4 man descended from monkeys, isn't that right?

5 A. I won't say I had a concern. I was told
6 right up front that they didn't do that.

125 7 Q. And so fair enough. Now, I'd like to turn
8 subjects now and talk about a board meeting that
9 was held on June the 7th of 2004.

10 A. All right.

126 11 Q. Do you remember that there was a board
12 meeting on June the 7th, 2004?

13 A. Yes.

127 14 Q. Now, I'd like you to just take a look at
15 what's been marked P-42 in your book, just so
16 we're on the same page.

17 A. I'm here.

128 18 Q. You're at that page?

19 A. Yes.

129 20 Q. That's actually the agenda for the board
21 meeting, isn't it?

22 A. Yes.

130 23 Q. By "that," I mean the board meeting on June
24 the 7th, 2004. If you look at pages 8 and 9 of
25 this document, they're in the lower right-hand

- 1 corner, this little page number, go to page 8.
2 It says "Curriculum" under Roman XIII.
- 3 A. I'm there.
- 131 4 Q. And it says next to curriculum it has your
5 name, Bill Buckingham?
- 6 A. Yes.
- 132 7 Q. That's because you were the head of the
8 curriculum committee?
- 9 A. Yes.
- 133 10 Q. And the section on curriculum carries over
11 to the next page you'll see, but I just want you
12 to confirm for me that that shows that the board
13 was scheduled to consider approval of some
14 science textbooks at this meeting on June the
15 7th.
- 16 A. That's true.
- 134 17 Q. And the board was scheduled to consider
18 approval of the chemistry textbook?
- 19 A. Yes.
- 135 20 Q. Actually more than one chemistry textbook,
21 right?
- 22 A. I remember one.
- 136 23 Q. Okay, and there's also the board was
24 scheduled to approve some textbooks for family
25 and consumer sciences?

1 A. Yes.

137 2 Q. But in fact the board was not scheduled
3 to consider approval of the biology textbook,
4 isn't that right?

5 A. Yes.

138 6 Q. Now, at this point in time the faculty and
7 administration of Dover High School had already
8 recommended that the board approve the purchase
9 of a new biology textbook, correct?

10 A. Yes.

139 11 Q. And that was the 2002 edition of the Miller
12 and Levine textbook Biology?

13 A. That's true.

140 14 Q. But approval of that textbook was being
15 held up by the board because of the book's
16 treatment of evolution, isn't that right?

17 A. We were still scrutinizing the book, going
18 through it, and that had some weight, yes.

141 19 Q. Now, there wasn't any other aspect of
20 the book other than evolution that you were
21 concerned with at this time, was there?

22 A. Well, the lack of any other theory, we
23 were concerned with that, too.

142 24 Q. But the lack of any other theory in the
25 area of evolution, isn't that right?

1 A. I.e. intelligent design or something else,
2 scientific to where the students would get a
3 more well rounded education.

143 4 Q. I understand, Mr. Buckingham, but I just
5 want to confirm that the book was being held up
6 by the board on June the 7th, 2004 because of
7 the, because of its treatment of evolution and
8 the fact that it didn't consider some other
9 things that you thought should be presented
10 alongside of evolution, isn't that right?

11 A. That's true.

144 12 Q. Now, we actually I suspect are going to
13 have some areas of disagreement about what
14 happened at the June 7th meeting, but let's
15 see if we can focus on just a few areas of
16 agreement. There was a board meeting that
17 night?

18 A. Yes.

145 19 Q. And you were there?

20 A. Yes.

146 21 Q. And the entire board was there?

22 A. I don't know if Mrs. Cleaver was there or
23 not. She was back and forth to Florida. She
24 was building a home down there, and I know she
25 had some storm damage at one point right after

1 it was near completion, and she was back and
2 forth. I don't know if she was there for sure.

147 3 Q. Please take a look at what's been marked as
4 P-43 that's in your notebook.

5 A. Okay.

148 6 Q. Are you there?

7 A. Yes, I am.

149 8 Q. That's actually the minutes of the June 7th
9 board meeting, isn't it?

10 A. Yes, it is.

150 11 Q. If you look at the top of the minutes it
12 shows that all the board members were present?

13 A. I thank you for refreshing my memory.

151 14 Q. Now, another thing we can agree on is that
15 at that board meeting there was some discussion
16 of the biology text, correct?

17 A. Yes.

152 18 Q. And you expressed the concern that the book
19 taught Darwin's theory of evolution and it was
20 your view that this other scientific theory that
21 you thought should be considered alongside of
22 Darwin's theory of evolution, correct?

23 A. True.

153 24 Q. And in fact at that board meeting you said
25 that you believed the separation of church and

1 state is mythical and not something you support?

2 A. That's true.

154 3 Q. And Barrie Callahan, one of the plaintiffs
4 in this case and a former board member, came up
5 to the podium to ask about whether the board was
6 going to approve the biology textbook. You
7 remember that, don't you?

8 A. Yes, I do.

155 9 Q. And in response to Mrs. Callahan's question
10 you said that you were concerned because the
11 book was laced with Darwinism, isn't that right?

12 A. That's true.

156 13 Q. That's a direct quote, right? Laced with
14 Darwinism?

15 A. That's what I said.

157 16 Q. Now, when I first asked you about this at
17 your deposition on January 3rd you didn't admit
18 then that you said that the book was laced with
19 Darwinism, didn't you?

20 A. I wasn't sure I said it at that point. If
21 you recall, that was shortly after I came out of
22 drug treatment for my Oxycontin that I was
23 prescribed for my back, and I was still going
24 through withdrawal from that and things were
25 kind of foggy.

158 1 Q. But the point is you didn't admit it when
2 I asked you about that on January 3rd?

3 A. I didn't remember.

159 4 Q. As a matter of fact, the defendant's answer
5 in this case admits that you said "laced with
6 Darwinism" at that first meeting, correct?

7 A. I haven't seen it, if you're saying that
8 happened.

160 9 Q. Still focusing on some potential areas of
10 agreement about the June 7th board meeting, you
11 said at that board meeting that with respect to
12 evolution you were concerned that if it's taught
13 over and over, the students begin to accept it
14 as fact, didn't you?

15 A. That's true.

161 16 Q. And you said that in response to the
17 comment of a young man named Max Pell, who
18 came up to the podium to speak during the
19 public comments section, isn't that right?

20 A. I don't know that I said it in response
21 to him coming to the podium and saying anything.
22 I know I said it in response to someone, but I
23 don't know for sure that was him.

162 24 Q. And you said at that board meeting that you
25 wanted other scientific theory taught in the

1 classroom alongside Darwin's theory of
2 evolution, correct?

3 A. I don't know if I said taught or presented.

163 4 Q. Well, in any event it was either you wanted
5 other scientific theories taught or presented
6 alongside Darwin's theory of evolution, isn't
7 that right?

8 A. Yes.

164 9 Q. Now, scientific theory is a word that we've
10 had some evidence about in this trial, but I
11 just want to make sure that I understand your
12 understanding of that term. When you say
13 scientific theory, you mean something that is
14 scientifically debatable, isn't that right?

15 A. Yes.

165 16 Q. And so you wanted a biology textbook that
17 would present other what you call scientific
18 theories alongside of evolution, correct?

19 A. Yes.

166 20 Q. And you didn't care what other theories
21 were presented, just as long as other theories
22 were presented alongside of evolution, isn't
23 that right?

24 A. I wouldn't say that. I had some little bit
25 of background about intelligent design and I

1 felt comfortable that that would be a good fit
2 because of research I did on the computer and so
3 forth.

167 4 Q. But putting aside intelligent design for
5 just a minute, you would have been happy with
6 the science teachers teaching any theories that
7 they thought scientifically plausible alongside
8 of evolution, isn't that right?

9 A. Within certain parameters with the okay of
10 the board, yes.

168 11 Q. I mean the main point for you was that
12 there would be something presented alongside
13 Darwin's scientific theory of evolution, isn't
14 that right?

15 A. In an effort to show that Darwin wasn't the
16 only scientific theory out there, yes.

169 17 Q. Right. So it could have been intelligent
18 design, but you would have been happy with
19 something else that was presented alongside
20 of Darwin's theory, isn't that right?

21 A. I wouldn't have been as happy I don't
22 think, but it would have been something, yes.

170 23 Q. And the reason that you wanted these other
24 scientific theories presented is because you
25 were concerned that the students might accept

1 that scientific biological theory of evolution
2 as a fact. That was your concern, wasn't it?

3 A. To the exclusion of other theories, yes.

171 4 Q. Now, moving on to a slightly different
5 subject, when you lived in Dover you had the
6 York Dispatch and the York Daily Record
7 delivered to your home on a daily basis, isn't
8 that right?

9 A. My father did when he came to live with
10 us after my mother passed away, and he liked
11 getting both the papers, and he was with us
12 for almost seven years before he died of lung
13 cancer, and he liked having both the papers.

172 14 Q. When did your father die?

15 A. He died May the 1st, 2003.

173 16 Q. And after that you still continued to
17 receive the York Daily Record and the York
18 Dispatch delivered to your home daily, isn't
19 that correct?

20 A. They came, but I didn't read them.

21 I eventually stopped them.

174 22 Q. Is one of those a morning paper and the
23 other one is an evening paper?

24 A. The Daily Record is a morning paper and
25 the York Dispatch is an evening paper.

175 1 Q. Now, I'd like to ask you some questions
2 about some articles that were in those papers.
3 Please if you would turn to what's been marked
4 as Plaintiff's Exhibit 44.

5 A. I'm here.

176 6 Q. I'd like you to take a look at that and let
7 me ask you a question. Did you review documents
8 to prepare yourself to testify today?

9 A. I read some depositions at home before I
10 came up, but I didn't have all those. When we
11 moved a lot of things just got put places I
12 never found yet.

177 13 Q. So did you read any news articles from the
14 York Dispatch or the York Daily Record to
15 prepare yourself to testify today?

16 A. It wouldn't make sense to do that because
17 I don't believe a darn thing they print.

178 18 Q. So tell you what, you're going to need
19 read, to look at what's been marked as
20 Plaintiff's Exhibit 44, and I'd like to know
21 whether looking at that you can tell me you
22 read it when it came out, which is on or about
23 June the 8th of 2004.

24 A. I couldn't tell you what I read a month
25 ago, let alone June the 8th, 2004.

179 1 Q. Well, you just told me that you stopped
2 reading the local papers, isn't that right?

3 A. That's true.

180 4 Q. And so you didn't, is it your testimony
5 that you didn't read any of the articles that
6 were in the papers about the school board in
7 the summer of 2004?

8 A. No, I didn't. I would be told by people
9 there are things in there, but my experience
10 with the reporters were the articles almost got
11 to be laughable. They'd come to the meetings
12 and we talked intelligent design, and you could
13 almost bet your house they were going to say
14 creationism the next day, and it just got
15 disgusting and I just wouldn't pay for it or
16 read it anymore.

181 17 Q. Okay, so you didn't read any of the
18 articles that were in the papers in the summer
19 of 2004?

20 A. No, I didn't.

182 21 Q. And people told you about articles, but
22 they didn't tell you what was in those articles,
23 isn't that correct, Mr. Buckingham?

24 A. I won't say no one ever told me what was in
25 them, but I know they would tell me, "You're in

1 the paper again or the board is in the paper
2 again."

183 3 Q. Well, at your deposition on March the 31st,
4 which Mr. Rothschild took, you told him, you
5 clarified your testimony from your previous
6 deposition to say that you were told that there
7 were articles in the paper, but you were not
8 told what they were. Isn't that correct?

9 A. Usually I was not, but I won't say I was
10 never told.

184 11 Q. Looking at this, what's been marked as
12 P-44, at the top you see there's a heading it
13 says "Dover debates evolution in biology text.
14 Book on hold because it doesn't address
15 creationism." Do you see that?

16 A. Yes, I do.

185 17 Q. Is that a true statement?

18 A. No.

186 19 Q. Now, if you turn to the second page of
20 this, and you go to the fourth paragraph down
21 it says that, "Buckingham said although the book
22 has been available for review since May 2003, he
23 had just recently reviewed the book himself and
24 was disturbed the book was laced with
25 Darwinism." That's a true statement, isn't it?

1 A. Which book are we talking about, the 2004
2 or the 2002 edition?

187 3 Q. Well, if you look at the text of the
4 article it's referring to a biology textbook.

5 A. They were both biology textbooks.

188 6 Q. When you say what were both, the 2002
7 and 2004?

8 A. Right. We eventually bought the 2004.

189 9 Q. Did you say that either of them on a
10 meeting of the board on June the 7th as reported
11 in this article, did you say with respect to
12 either of them that, "Buckingham said although
13 the book has been available for review since May
14 2003, he had just recently reviewed the book
15 himself and was disturbed the book was laced
16 with Darwinism," did you say that?

17 A. I don't know that I said that. I know that
18 I said the book, the 2002 edition was laced with
19 Darwinism. I don't know about the dates we're
20 talking about there.

190 21 Q. Okay. Now, if you go down just a few more
22 paragraphs, and we're focusing on statements in
23 here that are attributed to you, if you go down
24 to the seventh paragraph on that page, it says
25 "Opposes separation of church and state.

1 Buckingham said he believes the separation of
2 church and state is mythical and not something
3 he supports." Do you see that?

4 A. Yes, I do.

191 5 Q. And that's in fact a true statement. You
6 did say that at that meeting?

7 A. Yes, I did.

192 8 Q. Now, I'd like you if you would to please
9 turn to the next exhibit, which is marked P-45.

10 A. I'm there.

193 11 Q. And this is an article from the York
12 Dispatch dated June the 9th of 2004, and it's
13 by a writer named Heidi Bernhard-Bubb. Do you
14 see that?

15 A. Yes, I do.

194 16 Q. Do you know Ms. Bernhard-Bubb?

17 A. I know who she is. I don't know her.

195 18 Q. You knew that she's a reporter?

19 A. Yes.

196 20 Q. I'd like you to take a look at this and
21 tell me whether you think you read this article
22 at or around the time it was published.

23 A. No, I didn't.

197 24 Q. Okay. Now, if you look there's a second
25 paragraph that has a very similar reference to

1 what we looked at with the previous article
2 about a statement by you that the biology
3 textbook was laced with Darwinism. Do you see
4 that?

5 A. Yes, I do.

198 6 Q. Except that refers to the 2002 edition of
7 the biology textbook?

8 A. Yes.

199 9 Q. In fact, you know that statement is true,
10 right?

11 A. Yes.

200 12 Q. Then the next statement in the article
13 says, "Board member Noel Renwich agreed." Is
14 that a true statement?

15 A. I don't remember if he did or not.

201 16 Q. Okay. Then look at the next paragraph that
17 says, "The book was initially selected by the
18 high school science department and district
19 administration to replace the current textbook,
20 which is six years old and out of date in some
21 areas." Do you see that?

22 A. Yes, I do.

202 23 Q. That's a true statement, isn't it?

24 A. I don't know that the administration
25 selected it. I think the science department

1 selected it and took it to the administration
2 to bring to us.

203 3 Q. So with that clarification that's a true
4 statement, right?

5 A. With that clarification, yes.

204 6 Q. Now, if you go to the next paragraph, I'll
7 just read you the first sentence, it says, "A
8 recommendation on the book will come from the
9 curriculum committee, which also includes board
10 members Sheila Harkins and Casey Brown." Do you
11 see that?

12 A. Yes, I do.

205 13 Q. That's a true statement, isn't it?

14 A. Yes.

206 15 Q. And then the next sentence says,
16 "Buckingham said the committee would look
17 for a book that presented both creationism
18 and evolution." Do you see that?

19 A. I see it.

207 20 Q. You actually said that?

21 A. No, I didn't.

208 22 Q. You didn't say that at the --

23 A. No, I didn't.

209 24 Q. Now, the march of the articles, let's go on
25 to P-46, which is another article.

1 A. I'm there.

210 2 Q. This is an article dated June the 9th, 2004
3 from the York Daily Record, isn't it?

4 A. Yes.

211 5 Q. And it was written by Joseph Maldonado?

6 A. Yes, it was.

212 7 Q. And do you know Mr. Maldonado?

8 A. I know he's a reporter.

213 9 Q. And he was a reporter for York Daily
10 Record, right?

11 A. Yes.

214 12 Q. Now, did you read this article at or around
13 the time it was published on June the 9th, 2004?

14 A. No.

215 15 Q. Let's look at that, I want to ask you some
16 questions about the text. Look at the very
17 first paragraph in this, it says, "Former Dover
18 high school board member Barrie Callahan
19 repeated her request for new biology books for
20 the high school at Monday night's board
21 meeting." Do you see that?

22 A. Yes, I do.

216 23 Q. And that's referring to the June 7th
24 meeting?

25 A. Yes.

217 1 Q. And that's actually a true statement, isn't
2 it? You agree with that?

3 A. That was normal for her. Every meeting she
4 did that, yes.

218 5 Q. And therefore the next sentence in the P-46
6 is also true, it says, "For the past few months
7 she has appeared several times before the board
8 to request a status update."

9 A. That's true.

219 10 Q. And the next statement says, "Board member
11 William Buckingham, who sits on the curriculum
12 committee, said a book had been under
13 consideration, Biology, by Miller and Levine,
14 but was declined because of its one-sided
15 references to evolution." Do you see that?

16 A. I see it.

220 17 Q. That's a true statement, isn't it?

18 A. No, it's not. It wasn't declined at that
19 point.

221 20 Q. So that statement is true except that it
21 wasn't declined at that point, right?

22 A. And I don't think I said it's declined
23 because of one-sided references to evolution.

222 24 Q. So it's your testimony that that statement
25 in the Exhibit P-46 is in fact not true,

1 correct?

2 A. True. Correct.

223 3 Q. Let's look at the next paragraph. It says,
4 actually the article says, it's quoting you,
5 "'It's inexcusable to teach from a book that
6 says man descended from apes and monkeys,' he
7 said. 'We want a book that gives balanced
8 education.'" Do you see that?

9 A. I see it.

224 10 Q. Now, that's a true statement. You did say
11 that at the June 7th board meeting?

12 A. I don't remember saying that.

13 (Brief pause.)

225 14 Q. So your testimony is not that you didn't
15 say it. It's that you don't remember saying it,
16 isn't that right?

17 A. That's my testimony.

226 18 Q. Then the next paragraph says, "Buckingham
19 and other board members are looking for a book
20 that teaches creationism and evolution." Do you
21 see that?

22 A. I see it.

227 23 Q. Now, you said that, didn't you?

24 A. No, I didn't.

228 25 Q. And the statement after that says, "But

1 a former student, Max Pell, told the board
2 Monday night that he was concerned that that
3 type of book would trample on the separation of
4 church and state." Do you see that?

5 A. I see it.

229 6 Q. Now, do you remember a young man by the
7 name of Max Pell speaking at that meeting?

8 A. Yes, I do.

230 9 Q. And do you remember him saying something
10 about what the board wanted to do would the
11 trample on the separation of church and state?

12 A. I can't say I do, no.

231 13 Q. So you just don't remember, is that
14 correct?

15 A. I don't remember everything he said.

232 16 Q. You don't remember whether he said this
17 statement, isn't that correct?

18 A. That's true.

233 19 Q. Now, the next paragraph says, "Board
20 president Allen Bonsell disagrees, saying there
21 were only two theories, creationism and
22 evolution, that could possibly be taught.
23 He said that as long as both were taught as
24 theories, there would be no problem for the
25 district." Do you see that?

1 A. I see it.

234 2 Q. Did Mr. Bonsell say that?

3 A. I never heard him say that.

235 4 Q. So it's your testimony that he didn't say
5 it or you don't remember?

6 A. I don't go with him everywhere he goes.
7 I don't know if he said it or not, but I don't
8 remember hearing him say it.

236 9 Q. Well, I guess what I'm trying to figure out
10 is this is reporting that that was said at the
11 board meeting, right?

12 A. Apparently that's what they're saying was
13 said, but I didn't hear it.

237 14 Q. And I just want to make the record clear
15 here, are you saying that you don't remember it,
16 you don't remember hearing it, or are you saying
17 you're sure it wasn't said?

18 A. I'm sure it wasn't said, because if he
19 would have said it I would have remembered
20 it, because it just wouldn't have made sense.

238 21 Q. Okay. Let's talk about the next statement
22 in there. It says, again quoting you, "'Have
23 you ever heard of brain washing?' Buckingham
24 asked Pell. 'If students are only taught
25 evolution, it stops becoming theory and becomes

1 fact.'" That's true, isn't it?

2 A. It's close, but it's not accurate.

239 3 Q. In what respect is it not accurate?

4 A. What I said was if students are taught the
5 same thing over and over again, whether it's
6 true or not, it becomes fact in their minds.

240 7 Q. And then the next statement says, "After
8 the meeting Buckingham said all he wants is a
9 book that offers balance between what he said
10 are Christian views of creationism and
11 evolution." Do you see that?

12 A. I see it.

241 13 Q. And you in fact did say that at the
14 meeting, didn't you?

15 A. No, I didn't.

242 16 Q. And then the final statement in here says,
17 "He said, 'There needn't be consideration of the
18 beliefs of Hindus, Buddhists, Muslims, or other
19 faiths and views,'" and then quoting you
20 directly, "'This country wasn't founded on
21 Muslim beliefs or evolution,' he said. 'This
22 country was found on Christianity, and our
23 students should be taught as such.'" Do you
24 see that?

25 A. I see it.

243 1 Q. You said that, didn't you?

2 A. No, I didn't.

244 3 Q. Well --

4 A. I didn't say it then. I made a statement
5 similar to that when we having a discussion
6 about taking "under God" out of the Pledge, and
7 I said it to Joe Maldonado after the meeting
8 because he asked me if I didn't think that
9 Hindus and Muslims would be offended by having
10 "under God" in there. I said I didn't think
11 they would, because it doesn't refer to a
12 specific god. It refers to God. And I did make
13 this statement that this country was founded on
14 Christianity, we have the Pilgrims and so forth,
15 and the Federalist Papers, the Preamble to the
16 Constitution says we're all created, you know,
17 it's all through our history, and that's what I
18 was getting it.

245 19 Q. So the fact is you definitely said a
20 statement or something very similar to what's
21 reported in this article, correct?

22 A. Not at this time. It was at the debate
23 about taking "under God" out of the Pledge,
24 to pass the resolution to keep it in.

246 25 Q. Right, but you actually said -- it was at

1 a different time, but you said something very
2 similar to what's reported in this paper, isn't
3 that correct?

4 A. I said something close to that, and I said
5 to it a reporter after the meeting.

247 6 Q. Right, and that was at the time of the
7 board considering passing a resolution regarding
8 the Pledge of Allegiance, isn't that correct?

9 A. That's true.

248 10 Q. And that was in 2003?

11 A. Yes.

249 12 Q. In fact, it was in the last part of 2003,
13 the fall of 2003?

14 A. I believe it was.

250 15 Q. Now, when I asked you about this at your
16 deposition you denied saying it ever, isn't
17 that correct?

18 A. I don't know if I denied saying it ever,
19 if I didn't understand the question or what,
20 but I know I said it when it came to the Pledge.

251 21 Q. Please take a moment to look at pages 44
22 and 45 of your January 1 deposition.

23 A. You mean January 3 deposition?

252 24 Q. I'm sorry, January 3 deposition.

25 A. What pages were they?

253 1 Q. Page 44 beginning at line 7, and continuing
2 on to page 45.

3 A. I'm there.

254 4 Q. Okay, we were talking about an article
5 which we'll actually talk about a little later
6 this morning, and beginning on line 7 I said
7 to you, "It says here that in addition to
8 applauding you for the forthright way in which
9 you dealt with your personal issues relating to
10 Oxycontin, it says that you had made the
11 following statements: 'This country wasn't
12 founded on Muslim beliefs or evolution. This
13 country was founded on Christianity, and our
14 students should be taught as such.' And it also
15 says, 'Two thousand years ago someone died on a
16 cross. Can't someone take a stand for him?' Do
17 you see that?"

18 A. I see that.

255 19 Q. "QUESTION: Did you make either of those
20 statements?"

21 ANSWER: Not at this time. The 'This
22 country wasn't founded on Muslim beliefs or
23 evolution, this country was founded on
24 Christianity,' I never say that.

25 QUESTION: You never said that at all?

1 ANSWER: Not to my knowledge."

2 Then going to the next page:

3 "QUESTION: You never said the statement
4 about Muslim beliefs or evolution? You never
5 said that at all? Is that your testimony?

6 ANSWER: I don't recall saying that, no."

7 That was the testimony you gave?

8 A. I was speaking in the context of a board
9 meeting. I made that statement after a meeting
10 to a reporter.

256 11 Q. So even though the words aren't used there,
12 what you meant to say was that in response to
13 the question you never said that at a board
14 meeting, is that correct?

15 A. That's what I thought you were referring
16 to when you asked me that question, yes.

257 17 Q. Now, let's just move on to what's been
18 marked as P-47.

19 A. I'm there.

258 20 Q. This is another, yet another article in a
21 local paper, this one from the York Daily
22 Record, dated June the 10th of 2004, and it's
23 reporting that board meeting that took place
24 on June the 7th of 2004, isn't that right?

25 A. I'm sorry, I don't see where it refers to

1 a specific board meeting.

259 2 Q. Well, if you look at the third paragraph
3 it says, "During this past Monday night's board
4 meeting board members Allen Bonsell, Noel
5 Renwich, and Buckingham spoke aggressively in
6 favor of having a biology book that includes
7 the theory of creation as part of the text."
8 Do you see that?

9 A. I see that.

260 10 Q. That's a reference to the June 7th board
11 meeting, isn't it?

12 A. Yes.

261 13 Q. That's actually a true statement, isn't
14 it, the one I just read?

15 A. No, it's not. It's just another instance
16 where we would say intelligent design and they
17 would print creationism. It happened all the
18 time.

262 19 Q. And you didn't read this article at or
20 around the time it was printed, did you?

21 A. No, I didn't.

263 22 Q. And then if you look, the paragraph that's
23 just after it, it's just one sentence actually,
24 after the one that I just said is quoting you,
25 and it says, "'All I'm asking for is balance,'

1 Buckingham said." Do you see that?

2 A. Yes, I do.

264 3 Q. And you did say that at the June 7th
4 meeting, didn't you?

5 A. Yes, to the extent that we wanted more than
6 one scientific theory presented, that's true.

265 7 Q. And then if you look at what's been marked
8 as P-50?

9 A. I'm there.

266 10 Q. This is a very short article that was in
11 the York Daily Record on June the 14th of 2004.
12 Do you see that?

13 A. Yes, I do.

267 14 Q. And it's another statement in here that
15 says, "Last time, Dover school board member
16 William Buckingham said a new biology book for
17 the district should offer a balance between
18 creationism and Darwin's theory of evolution."
19 Do you see that?

20 A. Yes, I do.

268 21 Q. And you didn't read this article at or
22 around June 14th of 2004, did you?

23 A. No.

269 24 Q. And then one more article on the June 7th
25 board meeting is at Exhibit P-51.

1 A. I'm there.

270 2 Q. And I just want to know, this repeats many
3 of the statements, but I just want to know if
4 you read this article at or around the time,
5 June 14th of 2004.

6 A. No, I didn't.

271 7 Q. So there were six articles in the local
8 papers that were delivered to your door every
9 day, reporting on the June 7th board meeting,
10 and you didn't read any of them, isn't that
11 right?

12 A. That's true.

272 13 Q. And nobody told you that statements were
14 being attributed to you such as wanting to teach
15 creationism, no one told you that, isn't that
16 right?

17 A. I don't remember anyone telling me that,
18 no.

273 19 Q. Your wife didn't tell you that, right?

20 A. No.

274 21 Q. Nobody at your church told you that, right?

22 A. I won't say -- people at the church would
23 come up and tell me there were things in the
24 paper, and sometimes they would blurt out
25 something in passing, but there was never any

1 in-depth discussion of what's in an article.
2 They might have just said, "Hey, they have you
3 talking about creationism again," and we didn't
4 talk about that. We talked about intelligent
5 design.

275 6 Q. So is it your testimony now that people did
7 say to you in June of 2004 that the papers were
8 reporting that you were talking about
9 creationism? Is that your testimony now?

10 A. It's the same as before. I said that on
11 rare occasions they would tell me what was in
12 there, but basically for the most part they
13 didn't, they would just say there's another
14 article in the paper about me or about the
15 school board as a whole.

276 16 Q. That's not what you told us at your
17 deposition, is it, Mr. Buckingham?

18 A. If you want to show it to me I'll look
19 at it.

20 (Brief pause.)

277 21 Q. Go to page 40 of your deposition, line 23.

22 A. Page 40?

278 23 Q. Page 40, line 23.

24 MR. GILLEN: Which one?

279 25 Q. Of the January 1st deposition.

1 A. January 3rd?

280 2 Q. January 3rd. Tell me when you're there,
3 Mr. Buckingham.

4 A. I'm there.

281 5 Q. I asked you, isn't it true that I asked
6 you the followings questions and you gave the
7 following answers?

8 "QUESTION: Let's turn to the next page of
9 this exhibit, June the 10th. By the way, did
10 anybody report to you at the time, did you see
11 any of this in the paper at the time, the things
12 that we've been looking at?

13 ANSWER: I stopped reading that stuff in the
14 paper. It got to be -- I never thought it would
15 get like this, and I just got tired of looking
16 at it. Like I say, I would open the paper, read
17 the obituaries, see how my fighting Phills did,
18 and that was about it.

19 QUESTION: Did anybody come up to you and
20 say in the community, your wife, your friends,
21 anybody come up to you and say, tell you that
22 these things are being written in the paper?

23 ANSWER: Not that I recall, no.

24 QUESTION: Nobody at your church mentioned
25 it to you?

1 ANSWER: Not that I recall."

2 That was your testimony, isn't it,

3 Mr. Buckingham.

4 A. Yes.

282 5 Q. And then actually you sought to clarify
6 this testimony at your second deposition, didn't
7 you? Do you remember seeking to clarify your
8 testimony at this point at your second
9 deposition?

10 A. No, but we'll go there.

283 11 Q. Well, turn to page 4 of your deposition on
12 March 31st, 2005.

13 A. I'm there.

284 14 Q. Mr. Rothschild asked you the following
15 question and you gave the following answer:

16 "QUESTION: Is there anything that you
17 testified during that deposition which was held
18 on January 3rd, 2005 that you would like to
19 change or modify?

20 ANSWER: One thing. There was a question
21 asked about whether or not anyone at my church
22 or any of my acquaintances told me there were
23 articles in the paper and explained what they
24 were to some extent, and I answered no. As I
25 recollect, I was told there were articles in the

1 paper, but I wasn't told what they were. I just
2 want to make that clear, because it kind of even
3 sounded funny to me. People did tell me there
4 were articles in the paper, but I didn't look to
5 see them, and I was just told they were there."

6 That was your testimony on March the 31st,
7 2005, isn't that correct, Mr. Buckingham?

8 A. That's correct, and I would say that 99
9 percent of the time they didn't tell me what was
10 there. That's probably why I didn't remember
11 the rare occasions when they did.

285 12 Q. So you're clarifying your testimony yet
13 again?

14 A. I'm clarifying my testimony, yes.

286 15 Q. Now, Mr. Buckingham, I'd like to turn to
16 another different board meeting. This is the
17 board meeting that was held on June the 14th of
18 2004. Do you remember there was a board meeting
19 that day?

20 A. Yes.

287 21 Q. Now, as to both of the June meetings, with
22 the exception of what we can point out in these
23 articles and jog your memory, you don't recall
24 anything that happened at them, isn't that
25 right?

1 A. I won't say that. I recall things that
2 happened at the meeting.

288 3 Q. Well --

4 A. There was some times, the dates I didn't
5 have, you know, in the uppermost of my mind,
6 but I remember some things that happened.

289 7 Q. Well, do you remember telling me at your
8 deposition on January the 3rd that you don't
9 remember anything about those meetings?

10 A. No.

290 11 Q. Please turn to page 46 of your deposition
12 on January the 3rd. Line 17.

13 A. I'm there.

291 14 Q. Isn't it true that I asked you the
15 following questions and you gave the following
16 answers:

17 "QUESTION: Do you remember that there were
18 two meetings in June?

19 ANSWER: Yes.

20 QUESTION: Do you remember what happened at
21 those meeting?

22 ANSWER: No.

23 QUESTION: Do you remember anything what
24 happened at those meetings.

25 ANSWER: Nope."

1 That's your, that was your testimony on
2 January the 3rd, isn't that right,
3 Mr. Buckingham?

4 A. Because of the dates, I wasn't sure what
5 happened on what date.

292 6 Q. Well, you knew that there were some intense
7 discussions about the biology textbook, right?

8 A. Yes.

293 9 Q. But you couldn't tell me any of the
10 particulars about those discussions at your
11 deposition on January 3rd even though I asked
12 you for that, isn't that true?

13 A. It could be.

294 14 Q. Well, I tell you what. Why don't you just
15 look at page 47 of your deposition, line 24.

16 A. I'm there.

295 17 Q. Isn't it true that I asked you the
18 following questions and you gave the following
19 answers:

20 "QUESTION: Do you remember a meeting in
21 June where there was an intense discussion
22 about the biology curriculum and the biology
23 textbook?

24 ANSWER: Do I remember it specifically?

25 No."

1 A. I'm sorry, I'm on the wrong page or
2 something. It's not where I --

296 3 Q. Okay. Do you have the right transcript?
4 Maybe you've got the wrong one.

5 A. I'm at June 3rd.

297 6 Q. January 3rd.
7 A. January 3rd, I'm sorry.

298 8 Q. Page 47.
9 A. I'm there.

299 10 Q. Line 23, begins with the word --
11 A. Okay. All right.

300 12 Q. Let's start over. Beginning on line 24, I
13 asked you the following questions and you gave
14 the follow answers:
15 "QUESTION: Do you remember a meeting in
16 June where there was an intense discussion about
17 the biology curriculum and the biology textbook?
18 ANSWER: Do I remember it specifically? No.
19 We had different meetings where there were
20 intense discussions about the textbooks.
21 QUESTION: Which ones do you remember?
22 ANSWER: The particulars of?
23 QUESTION: In general.
24 ANSWER: I can just tell you there were
25 several meetings where we had discussion about

1 the textbooks.

2 QUESTION: What do you remember about those
3 discussions?

4 ANSWER: Pardon?

5 QUESTION: What do you remember about those
6 discussions?

7 ANSWER: I just remember that we had a
8 debate on it. There were questions about the
9 2002 over the 2004 book and vice versa, and
10 the thought that we would like to have other
11 scientific theories brought into the classroom
12 in addition to Darwin's theory of evolution."

13 You gave that testimony, didn't you?

14 A. Yes, I did.

301 15 Q. And you didn't provide any other
16 information beyond what's stated in that
17 testimony, isn't that right?

18 A. At that time that's what I could recall.

302 19 Q. Now, it's your testimony that at neither
20 meeting no one on the board ever mentioned
21 creationism, isn't that right?

22 A. That's true.

303 23 Q. You're very clear on that point, correct?

24 A. Absolutely, because it's just something we
25 didn't do.

304 1 Q. Okay. Now, about this June 14th meeting,
2 you were present, right?

3 A. Yes.

305 4 Q. And again all nine members of the board
5 were there?

6 A. Yes.

306 7 Q. And your wife spoke at the meeting?

8 A. Yes, she did.

307 9 Q. And she said that teaching evolution was in
10 direct opposition to God's teaching and that the
11 people of Dover could not allow the district to
12 teach anything but creationism. Isn't that
13 true?

14 A. I can't remember exactly what she said,
15 but I know it was pretty biblical.

308 16 Q. And do you remember that the board of
17 directors had a five minute rule?

18 A. We had a three minute rule, and she went
19 to five.

309 20 Q. So let me -- in other words, it's your
21 testimony that a board member -- excuse me, a
22 member of the public could speak up to three
23 minutes, and then they'd be asked to stop
24 speaking?

25 A. There were times when they went over the

1 three minutes, but basically the guideline was
2 three minutes, because we didn't want somebody
3 coming up and talking for half an hour to
4 monopolize all of the public comment time.

310 5 Q. And in fact she went over the time limit,
6 isn't that right?

7 A. By two minutes.

311 8 Q. She didn't speak for fifteen minutes?

9 A. No, she didn't. I was watching, because I
10 told her before I left the house I didn't know
11 what she was going to say, but I told her, "Make
12 sure you stay within three minutes," and she
13 went over it. She went to five.

312 14 Q. Well, do you remember that she quoted
15 scripture during her presentation to the board,
16 isn't that right?

17 A. Yes.

313 18 Q. And at that meeting you said something to
19 the effect that when you were growing up, your
20 generation prayed and read from the Bible and
21 you don't remember it hurting anyone. You said
22 that, didn't you?

23 A. I could have.

314 24 Q. Well, you could have or you did?

25 A. I don't know if I did or not. I'm saying

1 I could have.

315 2 Q. Now, you also said at that meeting, "I
3 challenge you, the audience, to trace your roots
4 to the monkey you came from." You said that at
5 that June 14th meeting, didn't you?

6 A. I was speaking to an individual who said
7 something to me. I didn't get it all, but it
8 had to do with a monkey, and my knee jerk
9 reaction was to say what I said.

316 10 Q. Who was the individual?

11 A. Lonnie Langioni.

317 12 Q. And also at that meeting you apologized if
13 you offended any resident or teachers at any
14 previous meetings, isn't that right?

15 A. With the tone of my voice, yes.

318 16 Q. And also at that meeting you said words to
17 the effect of, "Two thousand years ago someone
18 died on a cross for us. Shouldn't we have the
19 courage to stand up for him?"

20 A. What meeting are we talking about here?

319 21 Q. June the 14th of 2004.

22 A. I didn't say it then.

320 23 Q. You're sure about that?

24 A. Positive.

321 25 Q. Actually you know you did say words or

1 those words or words very similar at a board
2 meeting, but it wasn't in June of 2004, correct?

3 A. It was regarding taking "under God" out of
4 the Pledge, and God was already mentioned in the
5 Pledge.

322 6 Q. So the fact is you did actually say words
7 very similar to that, but it was at an earlier
8 time?

9 A. Yes.

323 10 Q. And again that was in the discussion over
11 the Pledge in the last part of 2003?

12 A. Yes.

13 MR. HARVEY: Your Honor, we're going to go
14 through some more articles on the board meeting.
15 I'm happy to march through them, but it might be
16 a good time to --

17 THE COURT: All right. Well, why don't we
18 take our break now? We'll break for about
19 twenty minutes. This will be our morning,
20 mid-morning recess, and we'll reconvene after
21 that point. We'll be in recess.

22 (Recess taken at 10:20 a.m. Trial resumed
23 at 10:45 a.m.)

24 THE COURT: Be seated, please. All right
25 Mr. Harvey, you may continue.

1 EXAMINATION CONTINUED BY MR. HARVEY:

324 2 Q. Mr. Buckingham, just to go back on a few
3 points, we talked about a newsletter. Do you
4 remember looking at that, the February 2005
5 newsletter that you said you weren't that
6 familiar with, do you remember that?

7 A. Yes.

325 8 Q. That was discussed at a board meeting,
9 wasn't it? Do you remember that?

10 A. I know the thought of a newsletter being
11 published was discussed. What would be in it
12 I don't think was at that time.

326 13 Q. You seconded the motion for approval
14 of that newsletter. Isn't that true,
15 Mr. Buckingham?

16 A. I don't remember that.

327 17 Q. Just to be real clear about this testimony,
18 we talked about a statement to the effect of,
19 "Two thousand years ago a man died on a cross,
20 can't someone take a stand for him?" You
21 remember that, right?

22 A. With regard to taking God out of the
23 Pledge, yes.

328 24 Q. Let's be very clear about this. It's your
25 contention that that was said at the time of the

1 Pledge, not in June of 2004, correct?

2 A. Yes.

329 3 Q. And also to be very clear there was a
4 statement about this country not being founded
5 on Muslim beliefs and our being founded on
6 Christianity and the children should be taught
7 as such. Do you remember that? You remember
8 testifying about that, right?

9 A. Yes.

330 10 Q. And to be very clear about this, it's your
11 contention that that was said at the time of the
12 Pledge, not in June of 2004, right?

13 A. It was actually said after the board
14 meeting in a conversation between myself and
15 Joe Maldonado.

331 16 Q. At the time of the Pledge? That's your
17 convention that it was at the time of the Pledge
18 that you said that to Mr. Maldonado after a
19 board meeting, correct?

20 A. Yes, that's how I recall it.

332 21 Q. And very clear, you didn't say that in June
22 of 2004? That's your testimony, isn't it?

23 A. Yes.

333 24 Q. And with respect to creationism, it's your
25 testimony that creationism was never said by any

1 board member, including you, at any board
2 meeting, isn't that correct?

3 A. That's true.

334 4 Q. And is it your testimony that creationism
5 was never said to any reporters after any board
6 meeting?

7 A. That's true.

335 8 Q. And is it your testimony that you never
9 talked about creationism or to your knowledge
10 none of the board members ever talked about
11 creationism among themselves, is that your
12 testimony?

13 A. Yes.

336 14 Q. Please go to what's been marked as P-54.

15 A. Before I look at this I need to clarify
16 that we talked about that we did not want to
17 have, teach creationism, that aspect, but not
18 in favor of having it in the curriculum or
19 something like that.

337 20 Q. Please turn to exhibit P-54.

21 A. I'm there.

338 22 Q. This was an article that was in the York
23 Dispatch on June 15th of 2004, isn't that right?

24 A. Yes.

339 25 Q. And it's by Ms. Bernhard-Bubb, correct?

1 A. Yes.

340 2 Q. And I'd like to know whether you read this
3 article at or around June the 15th of 2004.

4 A. No, I did not.

341 5 Q. If you'd turn to the second page of the
6 article, the fourth full paragraph down, there's
7 this statement, "'Nearly two thousand years ago
8 someone died on a cross for us. Shouldn't we
9 have the courage to stand up for him?' he
10 asked." And that's referring to you? It's
11 your, you claim that this article is just wrong
12 about this, isn't that right?

13 A. That's right.

342 14 Q. The reporter was just making it up? That's
15 your testimony?

16 A. I'm saying I didn't say it then.

343 17 Q. The reporter was just making it up. Isn't
18 that what you told us earlier?

19 A. I didn't read the whole article, but if
20 you're saying I said it then, if she's saying
21 I said it then, yes.

344 22 Q. And how about the next statement? It says,
23 "Board members Allen Bonsell and Noel Renwich
24 agreed with Buckingham, saying creationism
25 should be taught to balance evolution." Was

1 that, is that a true statement there, that was
2 said at the board meeting, Mr. Buckingham?

3 A. No, it's not.

345 4 Q. And how about the statement after that,
5 "Buckingham apologized for offending any
6 teachers or residents of the community with
7 his remarks, but was unapologetic about his
8 belief that the country was founded on
9 Christianity and not other religions, and
10 that a 'liberal agenda' was chipping away at
11 the rights of Christians in this country."
12 Do you see that?

13 A. Yes.

346 14 Q. It's true that that was said at the
15 meeting, wasn't it?

16 A. I remember giving an apology. I don't
17 remember saying that whole thing.

347 18 Q. So it's your testimony then that this,
19 except for the fact of the apology, that what's
20 reported here, that statement I just read, is
21 not correct? That's your testimony?

22 A. I remember apologizing for the tone of my
23 voice at the time. That's the only part of that
24 I remember saying.

348 25 Q. So but are you saying that for the rest of

1 that statement that I read with the exception of
2 the apology is incorrect? Is that your
3 testimony?

4 A. I'm saying I don't remember it.

349 5 Q. So you might have said it, you just don't
6 remember it?

7 A. I don't remember it.

350 8 Q. Please turn to what's been marked as P-53.

9 A. I'm there.

351 10 Q. And this is an article by Joseph Maldonado
11 dated June 15th, 2004, correct?

12 A. Yes.

352 13 Q. And it's from the York Daily Record?

14 A. Yes.

353 15 Q. And did you read this at or around the time
16 it was published?

17 A. No.

354 18 Q. Now, if you look, I want to ask you about
19 some of the statements that you attributed to
20 you in here. If you go to the third paragraph
21 it says, "'Nowhere in the Constitution does it
22 call for a separation of church and state,' he
23 said," and you see that's referring to you. Do
24 you see that?

25 A. Yes, I do.

355 1 Q. And is it your testimony that you didn't
2 say that at the June 14th board meeting?

3 A. I said that with regards to taking "under
4 God" out of the Pledge.

356 5 Q. Okay, so let me see. This statement here
6 "Nowhere in the Constitution does it call for a
7 separation of church and state," you said that
8 at the time of the issue about taking the word
9 "God" out of the Pledge of Allegiance, is that
10 what your testimony is?

11 A. I'm not sure about -- I know this. It
12 could have been that meeting where we had a
13 vote. I'm not sure if that's the meeting. I'm
14 not sure if that's one -- I know that that at
15 one of the meetings when we had our vote and
16 Angie Yeungling changed her vote because Jeff
17 Brown through a temper tantrum and scared her,
18 I asked her, I said, "How could you do that?"
19 She said, "I was afraid." I said, "Of what?"
20 She said, "I thought he was going to have a
21 heart attack," and she said to me, "Separation
22 of church and state, Bill." And Joe Maldonado
23 was standing there, and if that would be the
24 meeting, then I said that then to her, and he
25 overheard it.

357 1 Q. I think the meeting you're referring to was
2 the one on August the 2nd, not that one --

3 A. Okay.

358 4 Q. So what about the statement that says, two
5 paragraph down that says, "Buckingham said while
6 growing up his generation prayed and read from
7 the Bible during school. Then he said liberals
8 in 'black robes' were taking away the rights of
9 Christians." Do you see that?

10 A. I see that.

359 11 Q. You said that at the June 14th board
12 meeting, isn't that correct?

13 A. No, I didn't.

360 14 Q. And then the next statement on the page,
15 and this is a different article, it says, "'Two
16 thousand years ago someone died on a cross,' he
17 said. Can't someone take a stand for him?'"
18 Do you see that?

19 A. I see that.

361 20 Q. That's being attributed to you?

21 A. Yes, it is.

362 22 Q. And it's your testimony you didn't say
23 that?

24 A. Not at that meeting.

363 25 Q. And so Mr. Maldonado has this wrong, and

1 Ms. Bernhard-Bubb also has this wrong, correct?

2 A. They sat beside each other at the school
3 board meetings, they look at each other's notes,
4 they talk during the meeting. The same company
5 owns both newspapers. It's not much of a
6 stretch to see how the same story would get in
7 both papers.

364 8 Q. You've given that some thought, haven't
9 you, Mr. Buckingham?

10 A. I've thought that for years.

365 11 Q. No, you thought about your answer here
12 today, didn't you, before you testified so
13 you'd have an explanation, isn't that right?

14 A. No, I've said that to different people on
15 different things. When I was a policeman we ran
16 into the same thing.

366 17 Q. Now, if you look down farther on that page
18 there's a statement that says, "But in reference
19 to its teaching of Darwinism he said, 'I
20 challenge you, the audience, to trace your
21 roots to the monkey you came from.'" Do you
22 see that?

23 A. I see that.

367 24 Q. And that's something that you in fact said
25 at the June 14th board meeting, didn't you?

1 A. To Lonnie Langioni.

368 2 Q. Well, you told me the same thing on June
3 the 7th.

4 A. Okay, that was when I said it. That's what
5 I'm saying, I said it when I was talking with
6 Lonnie.

369 7 Q. But you're telling us you said that one
8 time to Mr. Langioni, right?

9 A. Correct.

370 10 Q. And that was at a public board meeting,
11 correct?

12 A. Yes, it was.

371 13 Q. So that other people could hear it,
14 correct?

15 A. Yes.

372 16 Q. And your testimony is you only said it that
17 one time, not any other time?

18 A. That's true.

373 19 Q. Then if you turn the page on this article
20 what's been marked as P-53, the third and fourth
21 and fifth full paragraphs, it says, "Also during
22 public comment Buckingham's wife Charlotte
23 Buckingham argued that evolution teaches nothing
24 but lies. After quoting several verses from the
25 Book of Genesis in the Bible she asked, 'How can

1 we allow anything else to be taught in our
2 schools?' During her time she repeated gospel
3 verses telling people how to become born again
4 Christians and said evolution was in direct
5 violation of the teachings of the Bible." Do
6 you see that?

7 A. I see that.

374 8 Q. And that's an accurate statement about what
9 your wife said at that meeting on June 14th,
10 isn't that correct?

11 A. As I've testified before, she spoke in a
12 biblical way. I can't remember exactly what
13 she said.

375 14 Q. So you're not saying that this didn't
15 happen. You're just saying you can't remember
16 the exact words she used, correct?

17 A. I'm not going to say it happened if I don't
18 know it did. I'm saying she spoke in a biblical
19 manner, and that's what I remember.

376 20 Q. Now, if you turn to, continue down that
21 page, there's the eighth and ninth paragraphs
22 down, it says, "During the meeting Buckingham
23 told those in attendance that he has been asked
24 to tone down his Christian remarks, and then,
25 'But I must be who I am and not politically

1 correct,' he said." You said that at that
2 meeting, didn't you, Mr. Buckingham?

3 A. What I said was I was asked to tone down my
4 voice when I spoke at people, because that was
5 what I apologized for, because sometimes it
6 appeared that things would come out the wrong
7 way. It sounded like I was upset more than I
8 was, and it offended some people, and that's
9 what I apologized for, and I was talked to about
10 that.

377 11 Q. And but you also said that you had been
12 asked to tone down your Christian remarks.
13 Didn't you say that at --

14 A. No, sir, I didn't.

378 15 Q. So it's your testimony that that part of
16 the article that's been marked as P-53 is just
17 wrong, correct?

18 A. Yes.

379 19 Q. Now, I'd like to show you an article, turn
20 to page P-56. It's not an article, it's a
21 letter. Do you see that?

22 A. Oh, I'm sorry, I'm there.

380 23 Q. Are you at P-56? That's actually a letter
24 to the editor from one of the plaintiffs in this
25 case, Beth Eveland, dated June the 20th, 2004

1 that was in the York Sunday News. Do you see
2 that?

3 A. Yes, I do.

381 4 Q. Did you read this article at or around the
5 time it was in the York Sunday News on June the
6 20th?

7 A. No, sir, I did not.

382 8 Q. And if you look at it, Ms. Eveland, if you
9 look at the first paragraph, she says, and she's
10 referring to someone something that she read in
11 the paper, that she was upset with your comments
12 as quoted in Wednesday's York Daily Record,
13 "This country wasn't founded on Muslim beliefs
14 or evolution."

15 MR. GILLEN: Your Honor, just for the record
16 I want to preserve my objection. This is
17 different in time from the newspapers. It's
18 a letter to the editor, and I preserve our
19 standing hearsay objection.

20 THE COURT: Well, it is different,
21 Mr. Harvey. Do you want to respond to that?

22 MR. HARVEY: Yes, Your Honor. It's
23 impeachment. I'm going to ask him if he knew
24 that people in the community were making, were
25 talking about this and were aware of this, and

1 I want to know whether he knew that at the time.

2 It goes to show, it goes directly to voracity.

3 THE COURT: All right. Then the objection
4 is overruled.

5 BY MR. HARVEY:

383 6 Q. Mr. Buckingham, looking at the first
7 paragraph here, it's Ms. Eveland is talking
8 about something that was quoted in the York
9 Daily Record, and it's the same statement that
10 we talked about before, "This country wasn't
11 founded on Muslim beliefs or evolution. This
12 country was founded on Christianity, and our
13 students should be taught as such." Do you see
14 that?

15 A. Yes, I do.

384 16 Q. Were you aware in or around the time of
17 this newsletter or any time in the summer of
18 2004 that people in the community thought that
19 you had made a statement about Muslims and
20 Christianity and teaching our students
21 Christianity in the summer of 2004? Were
22 you aware of that?

23 A. No, I wasn't, but the way the papers report
24 things, it wouldn't surprise me.

385 25 Q. Well, I want to look at something else,

1 Mr. Buckingham. Let's look at what's been
2 marked as P-55.

3 A. I'm there.

386 4 Q. Now, this is a piece that was in the York
5 Sunday News on June the 20th, 2004, the same day
6 as Ms. Eveland's letter. Correct?

7 A. Could you repeat that? I was looking at
8 this.

387 9 Q. Yes. This is a piece that was in the York
10 Sunday News on June the 20th of 2004, the same
11 day as Ms. Eveland's letter that we just looked
12 at.

13 A. I see that.

388 14 Q. And I'd like to know whether you read this
15 at or about the time it was published.

16 A. No, I did not.

389 17 Q. Well, Mr. Buckingham, I'm going to read
18 this article to you, because I want to talk
19 about it for just a couple of minutes. "You
20 have to give Dover area school board member
21 William Buckingham this much, he's not afraid
22 to speak his mind. He doesn't shy away from
23 public controversy even when the limelight could
24 prove uncomfortable.

25 "Earlier this year he said he was taking a

1 leave of absence from the board to check into a
2 drug rehabilitation program. He said he'd
3 become addicted to pain medication prescribed
4 for chronic back illness. That took guts. It
5 would have been easy to say he was being treated
6 for an unspecified medical problem. Instead, he
7 took the opportunity to warn the community about
8 the perils of prescription addiction.

9 "Over the last couple of weeks
10 Mr. Buckingham has garnered headlines for his
11 public contentions that Dover Area High School
12 biology textbooks should present a 'balanced'
13 view of human origin, including both evolution
14 and creationism. It set off a torrent of
15 community debate and criticism, in part because
16 of the stridency of his rhetoric, 'This country
17 wasn't founded on Muslim beliefs or evolution.
18 This country is founded Christianity, and our
19 students should be taught as such. Two thousand
20 years ago someone died on a cross. Can't
21 someone take a stand for him?' Obviously
22 William Buckingham can." End of quotation
23 from P-55. Did I read that correctly?

24 A. Yes.

390 25 Q. Now, this article is essentially applauding

1 you for having the courage of your convictions.

2 You would agree with me on that, right?

3 A. Appears to be, yes.

391 4 Q. And yet you didn't know that this was

5 printed in the local newspaper that was

6 delivered to your house at the time, did you?

7 A. No, I didn't. Again, the same publishing

8 company owns the Sunday News.

392 9 Q. And in fact no one brought this to your

10 attention at any time until your deposition on

11 January the 30, 2005. That's what you're

12 claiming here, isn't it, Mr. Buckingham?

13 A. What was the date of the deposition?

393 14 Q. January the 3rd of 2005?

15 A. I don't remember knowing about this article

16 and I know I didn't read it.

394 17 Q. Excuse me?

18 A. I don't remember knowing about this article

19 and I know I didn't read it.

395 20 Q. Well, I asked about this at your deposition

21 on January 3rd, and you told me you had never

22 heard of it before until I showed it to you at

23 your deposition. You had never heard of any of

24 this before until I showed it to you at your

25 deposition on January 3rd, 2005. Do you

1 remember that?

2 A. No, I don't.

396 3 Q. Well, let's turn to your deposition.

4 January 3rd, pages 45 and 46. Well, actually
5 we need to start, I'm sorry, at page 43 to get
6 the full context. Line 21.

7 A. I'm there.

397 8 Q. I asked you the following questions, and
9 did you give the following answers:

10 QUESTION: Let's take a look at that. It's
11 June the 20th, York Sunday News. Please take a
12 moment to read that. Have you had a chance to
13 read that editorial of June 20th, 2004 in the
14 York Sunday News?

15 ANSWER: Yes, I have.

16 QUESTION: Have you read it before today?

17 ANSWER: I don't remember reading this.

18 QUESTION: Did anybody mention this to you?

19 ANSWER: I would have to say no. I

20 remember, I would have to say no.

21 QUESTION: It says here that in addition to
22 applauding you for the forthright way in which
23 you dealt with your personal issues relating to
24 Oxycontin, it says that you had made the
25 following statements, 'This county wasn't

1 founded on Muslim beliefs or evolution. This
2 country was founded on Christianity, and our
3 students should be taught as such.' And it
4 also says, 'Two thousand years ago someone died
5 on a cross. Can't someone take a stand for
6 him?' Do you see that?

7 ANSWER: Yes, I do.

8 QUESTION: Did you make either of those
9 statements?

10 ANSWER: Not at this time.

11 QUESTION: So 'This country wasn't founded
12 on Muslim beliefs or evolution, this country was
13 founded on Christianity.'

14 ANSWER: I never said that.

15 QUESTION: You never said that at all?

16 ANSWER: Not to my knowledge.

17 QUESTION: You never said the statement
18 about Muslim beliefs or evolution, you never
19 said that at all? Is that your testimony?

20 ANSWER: I don't recall saying that, no.

21 QUESTION: How about back in 2003 in
22 relation to the Pledge of Allegiance? Did
23 you say then?

24 ANSWER: I don't think I did.

25 QUESTION: The other one, 'Two thousand

1 years ago someone died on a cross. Can't
2 someone take a stand for him?' Did you say
3 that?

4 ANSWER: That goes back to the taking out of
5 the Pledge.

6 QUESTION: So it's your testimony that you
7 didn't make either of these statements at any
8 time in the period of June of 2004?

9 ANSWER: Correct.

10 QUESTION: Did it ever come to your
11 attention that the paper was reporting that
12 you had said these things in June of 2004?

13 ANSWER: Not that I recall.

14 QUESTION: So you were totally unaware, when
15 did you learn -- I mean, you know, sitting here
16 today you know now that the paper was reporting
17 that you said these things in June of 2004. Did
18 you know that before today, before this
19 deposition?

20 ANSWER: I don't think I did.

21 QUESTION: Did you read the complaints in
22 this matter?

23 ANSWER: Yes, I did.

24 QUESTION: It's in there. Did you see it in
25 there?

1 ANSWER: Yes.

2 QUESTION: So you must have known it then,
3 right?

4 ANSWER: Well, I didn't see this until
5 today. I thought you meant this.

6 QUESTION: So that's amazing. Before today
7 you didn't even know that these things were
8 being reported about you, is that correct?

9 ANSWER: That's true. That's true."

10 That was your testimony, wasn't it,
11 Mr. Buckingham?

12 A. Yes.

398 13 Q. Now I'd like to turn to another article
14 that was reported in the paper. This is what's
15 been marked as Plaintiff's Exhibit 60.

16 A. Pardon me? 60?

399 17 Q. Six zero.

18 A. I'm there.

400 19 Q. This is a letter to the editor from Dover
20 area school district board member Heather
21 Gessey, and it's dated June the 27th, 2004,
22 and it was printed in the York Daily Record.
23 Do you see that?

24 A. Yes.

401 25 Q. Did you read this at or around the time

1 it was printed?

2 A. I did not.

402 3 Q. It's a response to Ms. Eveland's letter,
4 and in it Ms. Gessey says, "You can teach
5 creationism without it being Christianity."
6 That's in the last paragraph. Do you see that?

7 A. I see it.

403 8 Q. So as of this time, June the 27th, 2004,
9 there was another board member who was using the
10 word creationism with respect to what the board
11 wanted to do, right?

12 A. I don't read her mail. I don't know about
13 this.

404 14 Q. And you never heard Ms. Gessey use the word
15 creationism?

16 A. No.

405 17 Q. In other words, that's what you're saying
18 here today, that you never heard her use the
19 word creationism?

20 A. That's true.

406 21 Q. And you're sure the board members didn't
22 talk among themselves about promoting
23 creationism? Is that your testimony?

24 A. I'm positive.

407 25 Q. Now, I'd like to show you what's been

1 identified as Exhibit P-145. You're going to
2 need to look at the monitor, or at the monitor
3 right in front of you, which is the television
4 screen.

5 (Video of television interview shown at
6 11:10 a.m.)

408 7 Q. That was you speaking, wasn't it?

8 A. It certainly was.

409 9 Q. And you were speaking to a reporter for
10 Channel Fox 43, isn't that right?

11 A. That's true.

410 12 Q. And that was in June of 2004?

13 A. Approximately, yes.

411 14 Q. And in it you said, "The book that was
15 presented to me was laced with Darwinism from
16 beginning to end." Isn't that what you just
17 said on the --

18 A. Yes.

412 19 Q. Do you need to see it again?

20 A. No.

413 21 Q. Now, that's basically the same statement
22 that was reported in the newspapers, isn't it?

23 A. Pretty close.

414 24 Q. And at first you told us you couldn't
25 remember making that statement?

1 A. At first --

415 2 Q. When we first talked about --

3 A. Excuse me, when you first talked about
4 that, I forgot about the interview.

416 5 Q. And --

6 A. And what happened was when I was walking
7 from my car to the building, here's this lady
8 and here's a cameraman, and I had on my mind all
9 the newspaper articles saying we were talking
10 about creationism, and I had it in my mind to
11 make sure, make double sure nobody talks about
12 creationism, we're talking intelligent design.
13 I had it on my mind, I was like a deer in the
14 headlights of a car, and I misspoke. Pure and
15 simple, I made a human mistake.

417 16 Q. Freudian slip, right, Mr. Buckingham?

17 A. I won't say a Freudian slip. I'll say
18 I made a human mistake.

418 19 Q. So, Mr. Buckingham, I guess what you're
20 telling us then is that when you gave that
21 statement that we just looked at on the video
22 monitor, at that time you were aware that the
23 board, that the local press had been reporting
24 that you used the word creationism, isn't that
25 correct?

1 A. Through talking with the board members
2 through our own conversations, yes, but not
3 through reading any of their papers. I knew
4 whenever we said intelligent design, creationism
5 would crop up in the newspaper the next day, and
6 it was a common problem we were having and we
7 didn't know how to overcome it. So we actually
8 stopped talking to the reporters.

419 9 Q. So it's your testimony now, now you're
10 claiming that in June of 2004 you did know that
11 the papers were reporting that you used the word
12 creationism, isn't that correct, Mr. Buckingham?

13 A. That's not what I said. I said they were
14 reporting that the board was talking about
15 putting creationism into the curriculum.

420 16 Q. And what I'm saying to you, Mr. Buckingham,
17 is what you're telling me is that in June of
18 2004 you knew there were reports in the
19 newspapers that you and other board members
20 had been talking and using the word creationism,
21 I'm not asking you to admit that you used the
22 word creationism. All I'm saying is that you
23 knew in June of 2004 that it had been reported
24 in the papers.

25 A. I knew that it was reported that the

1 board was using that word when we weren't.
2 Specifically I don't know who they were talking
3 about. I just knew it generically they were
4 talking about the board using the word
5 creationism instead of intelligent design.

421 6 Q. Now, the second statement you said there on
7 the tape was you said that, he had quoted you
8 saying as, "It's okay to teach Darwin, but you
9 have to balance it with something else, such as
10 creationism." That's a correct statement?

11 A. I thought that's what we were just talking
12 about.

422 13 Q. That's what you just said? I mean, I just
14 want to confirm that's what you said on the
15 monitor?

16 A. That was me on the monitor.

423 17 Q. Now, that's actually very similar to what
18 was reported in the newspapers, isn't it?

19 A. That doesn't make it accurate.

424 20 Q. Well, I'm just asking you if it's very
21 similar to what was reported in the newspapers.

22 A. It's similar.

425 23 Q. And so what you're telling us is that you
24 made a statement very similar to what's reported
25 in the newspapers, but the newspapers had it

1 wrong when they reported it, and you misspoke
2 when you spoke to the reporter from Fox 43, is
3 that your testimony?

4 A. Because of the situation I was involved
5 in at the time of the interview with Fox 43 --
6 I said that the atmosphere of the interview
7 with Fox 43 was completely different than the
8 atmosphere of a board meeting, and through
9 kind of, I kind of felt like I was ambushed,
10 I misspoke.

426 11 Q. So but what I'm asking you is what you're
12 saying is that the local reporters, actually
13 more than one local reporter, had it exactly
14 backwards, that they were reporting that you
15 were saying creationism when you weren't saying
16 creationism, and then you went on 43 and you had
17 it yourself backwards and you said creationism
18 when you didn't mean to say creationism, is that
19 your testimony?

20 A. Due to the different atmosphere I was
21 placed in, I think that was the first time
22 I was ever interviewed by anyone since I had
23 been on the school board, and I think it was a
24 combination of fright, the change in the
25 atmosphere, and I was just like I said I felt

1 like I was a deer in the headlights of a car,
2 and I concentrated so hard on not saying
3 creationism, I made a human mistake and I
4 said it.

427 5 Q. Let's take a look at the tape again. Matt,
6 would you play that one, P-145 one more time?

7 (Video segment of television played at
8 11:16 a.m.)

428 9 Q. You didn't look like you were very
10 pressured to me. Is there something in that
11 tape that suggests to you that you were feeling
12 pressured at the time?

13 A. I can't help how it looks. I'm telling you
14 I felt pressured at the time.

429 15 Q. Nobody was forcing you to make that
16 statement to the television reporter, were they?

17 A. I was kind of trying to be the nice guy.
18 They were between me and the door. I didn't
19 want to be rude. I tried to do something that
20 probably I wasn't equipped to do, because like I
21 say I think that was the first time I had ever
22 been interviewed, and I misspoke under the
23 pressure and the different atmosphere that I
24 hadn't been in before. I just misspoke, made a
25 human mistake. I'll accept that.

430 1 Q. Wouldn't you agree with me, Mr. Buckingham,
2 given that you said creationism to the reporter
3 from Fox 43, that you most likely said
4 creationism at the board meetings in June
5 of 2004?

6 A. Absolutely not.

431 7 Q. Let's test your memory on a different
8 subject. You remember that there was a board
9 meeting on August the 2nd, 2004, isn't that
10 right?

11 A. Yes, sir.

432 12 Q. And at that board meeting -- actually let's
13 turn to the minutes of that, which is P-67.
14 Now, at that board meeting the board voted on
15 approval of the 2004 edition of Biology by
16 Miller and Levine, right? That's the issue,
17 one of the issues the board took up on August
18 the 7th, 2004?

19 A. Yes.

433 20 Q. And you and two other board members voted
21 against approval of the biology textbook, isn't
22 that true?

23 A. Yes, sir.

434 24 Q. And those two other board members were
25 Mrs. Harkins and Mrs. Gessey?

1 A. Well, there were, actually Angie Yeungling
2 did, too, and then when Jeff Brown threw his
3 tantrum, she panicked and asked for a re-vote
4 because she was afraid.

435 5 Q. So because she was afraid to oppose or not
6 approve the biology textbook, right?

7 A. She was afraid of Jeff Brown. She was
8 afraid he would hurt her or have a heart attack
9 or something, and --

436 10 Q. She was unwilling to stand with you and
11 Mrs. Harkins and Mrs. Gessey against approval
12 of the biology textbook, correct?

13 A. She was afraid.

437 14 Q. I'm just saying she was unwilling to stand
15 with you, take a stand with you and Mrs. Harkins
16 and Mrs. Gessey against the biology textbook?

17 A. Take Jeff Brown out of the mix and she was
18 willing to stand with us.

438 19 Q. Okay. So if it hadn't been for Mr. Brown
20 she would have been willing to stand with you
21 against approval of the biology textbook by
22 Miller and Levine?

23 A. She actually did that in the first vote.

439 24 Q. Okay. Now, but just to be clear you were
25 clearly against approval of the biology textbook

1 by Miller and Levine on August the 2nd, 2004,
2 isn't that right, Mr. Buckingham?

3 A. I'm sorry, could you -- I missed the second
4 thing you said.

440 5 Q. I just want to make it clear, you were,
6 clearly voted against approving the Miller and
7 Levine Biology textbook on August the 2nd, 2004,
8 isn't that right, Mr. Buckingham?

9 A. Yes.

441 10 Q. But actually at your deposition when I
11 asked you about this, you told me that you voted
12 for the textbook, isn't that correct?

13 A. I think eventually I did.

442 14 Q. When I first asked you about this, you told
15 me that you voted for the textbook, isn't that
16 right?

17 A. I'm not sure that's right.

443 18 Q. Please take the January 3rd transcript and
19 go to pages 32 and 33.

20 A. I'm sorry, 32?

444 21 Q. Yes. Line 16.

22 A. I'm here.

445 23 Q. I asked you the following questions and you
24 gave the following answers:

25 "QUESTION: Was the purchase of a new

1 biology textbook approved at one of the meetings
2 of the board in June of 2004?

3 ANSWER: It was approved, but I'm not sure
4 when.

5 QUESTION: I think it was approved in
6 August.

7 ANSWER: Could be.

8 QUESTION: We'll get to that, but I'm sure.
9 Did you vote for that? Did you vote for that?

10 ANSWER: In August?

11 QUESTION: Yes.

12 ANSWER: Yeah.

13 QUESTION: You voted for the new biology
14 textbook?

15 ANSWER: Absolutely. To the best of my
16 knowledge I did. It was always our intent to
17 buy that book."

18 That was the testimony that you gave when I
19 asked you these questions on January 3rd,
20 correct?

21 A. Yes.

446 22 Q. And in fact at the meeting on August the
23 2nd you told the board that you were not going
24 to vote in favor of approval of the biology
25 textbook by Miller and Levine unless the board

1 also approved a companion text that covered the
2 subject of intelligent design, isn't that
3 correct?

4 A. That's true, and there were two reasons for
5 that.

447 6 Q. And in fact the biology textbook that you
7 didn't want to approve was the one that had been
8 recommended by the faculty and the staff, isn't
9 that correct?

10 A. Are we talking the 2004 edition now?

448 11 Q. Yes.

12 A. Yes.

449 13 Q. Now I'd like you to turn in your notebook
14 to what's been marked as P-795.

15 A. I'm sorry, P what?

450 16 Q. 795.

17 A. I'm sorry, I can't find anything close to
18 that.

451 19 Q. It's not in your notebook?

20 A. P-795?

452 21 Q. Yes. Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 A. I'm sorry, I see it now.

453 25 Q. Mr. Buckingham, I'd like you to take a look

1 at that. That's an article that appeared in the
2 Daily Record Sunday News on August the 4th of
3 2004, and I'd like to know whether you read it
4 at or around that time.

5 A. No, I didn't.

454 6 Q. Because you just weren't reading any of
7 these articles at this time, right?

8 A. That's true.

455 9 Q. If you look at, if you go to the second
10 column in this, the first and second paragraph?
11 It's on the screen, and it's also, if you can
12 read that, it says, "Buckingham then said if he
13 didn't get his book, the district would not get
14 the biology book. Buckingham has been a staunch
15 advocate for the teaching of creationism
16 alongside evolution," and I'd like to know, you
17 did say at that board meeting that if you didn't
18 get your book, the district would not get the
19 biology book. You said that, didn't you?

20 A. Yes, I did.

456 21 Q. And then if you go to the last column, the
22 second to the last and the third to the last
23 paragraphs, it says, "The board is still
24 considering approving the companion book for
25 use in the classroom. During the meeting

1 Bonsell and Renwich promised Buckingham that
2 the intelligent design book would get a fair
3 review." That's a fair statement of what
4 happened at that board meeting, isn't that
5 right, on that issue?

6 A. I don't remember that.

457 7 Q. Well, do you see the next line, it says,
8 "'Six votes are not out of the question,'
9 Bonsell said." Do you see that?

10 A. Yes, I do.

458 11 Q. Do you remember Mr. Bonsell saying that at
12 the board meeting?

13 A. No, I don't.

459 14 Q. Let's talk about that companion text. The
15 text was Of Pandas and People, right?

16 A. Yes.

460 17 Q. It's the book we looked at earlier?

18 A. True.

461 19 Q. And you actually learned about Pandas and
20 People from the Thomas More Law Center, isn't
21 that right?

22 A. Yes.

462 23 Q. And the person you learned about it from
24 was Mr. Thompson?

25 A. Yes.

463 1 Q. And in fact Mr. Thompson was the one who
2 recommended Pandas to you?

3 A. He didn't recommend it. He told me there
4 was a book there. I asked him if he knew of any
5 books anywhere that dealt with an alternative
6 scientific theory, and he mentioned the book to
7 me. He didn't recommend it at all.

464 8 Q. Well, he was the first one to tell you
9 about it, isn't that right?

10 A. Yes, he did.

465 11 Q. And you bought a copy, right?

12 A. Yes, I did.

466 13 Q. And you gave your copy to Dr. Nilsen?

14 A. Yes, I did.

467 15 Q. And the school board asked the teachers
16 what they thought about Pandas, right?

17 A. I'm sorry, I didn't hear the first part of
18 your question.

468 19 Q. And the school board asked the science
20 teachers what they thought about Pandas?

21 A. I think Dr. Nilsen might have at that
22 point.

469 23 Q. You didn't know that the school board asked
24 the teachers, the science teachers, what they
25 thought about the book Pandas?

1 A. Eventually that happened, but --

470 2 Q. Okay. Well, you know that the teachers,
3 the science teachers at Dover High School were
4 against Pandas. That's true, isn't it?

5 A. Yes.

471 6 Q. And the board didn't talk to anyone else
7 outside of the board or the science teachers
8 about Pandas such as professional educators or
9 scientists, isn't that right?

10 A. Not to my knowledge.

472 11 Q. Now, I'd like to talk to you about the
12 specifics of how the curriculum change came
13 about. Earlier today we talked about a
14 curriculum committee meeting that was held in
15 June of 2004. Do you remember that?

16 A. Yes.

473 17 Q. And the next curriculum committee meeting
18 after that June meeting was on August the 27th.
19 Do you remember that?

20 A. Yes.

474 21 Q. And the purpose of that meeting on August
22 the 27th of the curriculum committee was to
23 discuss Pandas, right?

24 A. I have a question about whether or not
25 that was the 27th or 24th, but they're in the

1 ballpark one way or the other.

475 2 Q. Well, let's take a look at what's been
3 marked as P-68. It's in your notebook, and
4 Matt, could you bring it up?

5 A. Okay.

476 6 Q. Take a look at P-68. Does that refresh
7 your recollection that that meeting was on August
8 the 27th?

9 A. Yes.

477 10 Q. Okay, and the purpose of that meeting on
11 August the 27th of the curriculum committee
12 was to discuss the textbook Pandas?

13 A. Yes.

478 14 Q. And the science teachers were present at
15 that meeting?

16 A. Yes.

479 17 Q. And in addition to you, Mrs. Harkins was
18 present at the meeting?

19 A. Yes.

480 20 Q. And Casey Brown was present at the meeting?

21 A. Yes.

481 22 Q. And when I say the science teachers, I mean
23 Bertha Spahr and Jen Miller in particular were
24 there, right?

25 A. I need to tell you I wasn't there for the

1 whole meeting. I had a doctor appointment. I
2 was there for a short while and left.

482 3 Q. Okay. Now, this is -- and at the meeting
4 what was discussed while you were there was your
5 proposal to have Pandas used as a companion text
6 to the biology textbook by Miller and Levine,
7 correct?

8 A. The proposal at that time I believe was
9 that the Pandas book would be used as a
10 reference book, and -- yes.

483 11 Q. Well, no, actually the idea of using Pandas
12 as a reference book was a compromise that was
13 adopted at that meeting, isn't that right,
14 Mr. Buckingham?

15 A. I'm not sure.

484 16 Q. You actually went into that meeting wanting
17 Pandas to be used as a companion text to the
18 biology textbook by Miller and Levine, right?

19 A. I don't recall that that's true.

485 20 Q. You don't know one way or another?

21 A. I don't think it's true. I don't know.

486 22 Q. Well, the point is that the teachers were
23 clearly against using Pandas as a companion
24 text, right?

25 A. Yes.

487 1 Q. But they were agreeable as a compromise to
2 use it as a reference text in the classroom,
3 right?

4 A. Eventually.

488 5 Q. Now, the next meeting of the curriculum
6 committee was on October the 7th. Do you
7 remember that?

8 A. I can't be sure of the date.

489 9 Q. Okay. Well, I'll tell you what. Let's
10 look at what's been marked as P-75.

11 A. I see that.

490 12 Q. Does looking at P-75 help you to remember
13 that the next meeting of the curriculum
14 committee was on October 7th?

15 A. Yes.

491 16 Q. And actually unlike the previous two
17 meetings, the teachers weren't invited to
18 this meeting, isn't that true?

19 A. I didn't set the meeting up. I know they
20 weren't there. I don't know if they were
21 invited or not.

492 22 Q. That's fair enough to say they weren't
23 there, right?

24 A. Yes.

493 25 Q. None of the teachers were there, correct?

1 A. I don't remember any of them being there.

494 2 Q. And since the teachers worked for the
3 school district, when they're asked to come
4 to a meeting they usually show up or have some
5 good excuse, right?

6 A. I don't know. Makes sense to me. I don't
7 know.

495 8 Q. Now, I'd like to show you what's been
9 marked as P-81. Do you recognize that document?

10 A. Yes, I do.

496 11 Q. That actually sets forth the positions on
12 the various constituencies on the subject of the
13 proposed curriculum change as of October 7th,
14 right?

15 A. Yes.

497 16 Q. And if you turn to page P-82, it's just
17 like P-81, except next to Mr. Bonsell's name
18 there's some handwriting?

19 A. Yes.

498 20 Q. It says, "Including, but not limited to
21 intelligent design."

22 A. I see that.

499 23 Q. Now, at this point in time, October the
24 7th, you wanted the biology curriculum changed
25 to include a reference to intelligent design,

1 isn't that true?

2 A. Yes.

500 3 Q. And there were other board members who

4 agreed with you about that?

5 A. Yes.

501 6 Q. In fact, Mrs. Harkins agreed with you?

7 A. Yes.

502 8 Q. Mrs. Gessey agreed with you?

9 A. Yes.

503 10 Q. Mrs. Cleaver agreed with you?

11 A. Yes.

504 12 Q. Angie Yeungling agreed with you?

13 A. Yes.

505 14 Q. Mr. Renwich agreed with you?

15 A. Yes.

506 16 Q. And Mr. Bonsell agreed with you?

17 A. As I recall, yes.

507 18 Q. And as of October the 7th of 2004 all of

19 the board members were in favor of this proposal

20 to include a reference in intelligent design in

21 the biology curriculum except for Casey and Jeff

22 Brown, right?

23 A. I think that's a fair statement.

508 24 Q. And the matter actually came up for a vote

25 at the next meeting of the board, which was

1 October the 18th of 2004?

2 A. I misspoke. Jeff Brown at this point was
3 in favor of intelligent design being added to
4 the curriculum, and that he said he had a dream
5 and God told him to vote against it. So he
6 changed his mind.

509 7 Q. That's not what you told us at your
8 deposition, is it, Mr. Buckingham?

9 A. I don't remember what I told you at the
10 deposition. I just know what I'm telling you
11 now.

510 12 Q. Please turn to page 92 of the January 3rd
13 deposition.

14 A. I'm there.

511 15 Q. Actually beginning on page 91, line 21,
16 I asked you the following questions and you gave
17 the follows answers:

18 "QUESTION: Now, at least at this point of
19 October 7th you were the one who wanted
20 intelligent design included in the revised
21 curriculum?

22 ANSWER: I was one of the people that did.

23 I wasn't the only one.

24 QUESTION: Who were the others?

25 ANSWER: Sheila Harkins, Janie Cleaver,

1 Heather Gessey. Was Heather Gessey there then?
2 I'm not sure if Heather Gessey was on the board
3 then. I know she wanted it.

4 QUESTION: I believe she was.

5 ANSWER: Okay, she wanted it. Angie
6 Yeungling indicated she did. Noel Renwich
7 wanted it. I guess that's about it.

8 QUESTION: What about Allen Bonsell?

9 ANSWER: Allen wanted it.

10 QUESTION: So that's everybody but the
11 Browns wanted it?

12 ANSWER: I guess so.

13 QUESTION: You just told me that that's at
14 the time of the October 18th, do I understand
15 that correctly?

16 ANSWER: No, we're talking about October
17 the 7th, aren't we?"

18 That was your testimony at that point,
19 Mr. Buckingham?

20 A. At that point, excuse me, Jeff Brown was
21 in favor of intelligent design, and he had his
22 dream and changed his mind.

512 23 Q. So you're telling me that the testimony we
24 just read is wrong?

25 A. I'm telling you what I remember about why

1 Jeff Brown changed his mind.

513 2 Q. That means that the testimony that you gave
3 at your deposition on January 3rd on this point
4 was wrong, correct?

5 A. It was as accurate as I could make it with
6 the best of my knowledge, information, and
7 belief at that time.

514 8 Q. Now, the biology curriculum change was
9 voted on at the board meeting on October the
10 18th. That's true, isn't it?

11 A. I'm not sure about the date again.

515 12 Q. Well, Matt, could you pull up what's been
13 marked as P-88? Mr. Buckingham, if you'd look
14 at what's been marked in your book as P-88,
15 that's the minutes of the October 18th board
16 meeting?

17 A. I'm there.

516 18 Q. And if you go to what has the Bates numbers
19 157 and 158, 159, and 160, you'll see there's
20 all the voting -- I'm sorry, it begins on page
21 158, the voting on the curriculum change.

22 A. Yes.

517 23 Q. Does that help to refresh your
24 recollection?

25 A. Yes, it does.

518 1 Q. It was in fact October 18th that you voted
2 on that?

3 A. Yes.

519 4 Q. Now, the standard practice for the Dover
5 area school district board of directors was to
6 have two meetings a month, isn't that true?

7 A. That's true.

520 8 Q. Would you agree with me that it was the
9 standard practice that the first meeting be a
10 planning meeting and the second meeting to be
11 an action meeting?

12 A. That usually was what took place, yes.

521 13 Q. Now, but the proposed change to the
14 curriculum was not on the planning meeting
15 agenda for the October 4th meeting that
16 preceded this October 18th meeting, was it?

17 A. No, it was not.

522 18 Q. So you deviated from the standard practice
19 in the manner in which the curriculum change
20 came up for approval or consideration at the
21 October 18th board meeting, true?

22 A. Yes, we did.

523 23 Q. And ultimately the resolution to change the
24 biology curriculum passed by a vote of 6 to 3,
25 isn't that right?

1 A. Yes.

524 2 Q. And the three people who voted against it
3 were Mr. Renwich and Mrs. Brown and Mr. Brown?

4 A. That's true.

525 5 Q. Now, I'd like you to take a look at what's
6 been marked as P-135.

7 A. Could I clarify my answer?

526 8 Q. Sure.

9 A. There was a reason why we did that on the
10 18th the way we did it. We had, it was
11 problematic for us to get a full board there.
12 I was having health problems, Janie Cleaver was
13 in and out of Florida, she was having problems
14 with her house. She was going to move to
15 Florida. Noel Renwich was going to move to
16 Lancaster County to take a job. We didn't want
17 to have to start this at square one again. We
18 wanted to bring this to a vote when the full
19 board was there. That's why we did it that way.

527 20 Q. Well, actually you wanted to make sure that
21 it would pass while there was still all the
22 people that you had that would support you in
23 changing the biology curriculum, isn't that
24 right? That's what you mean?

25 A. We wanted the full board to be there to

1 exercise their right to vote the way they wanted
2 to, and we had difficulty getting the full board
3 there for a while, and we knew on the 18th we
4 expected everyone to be there. So we brought
5 it up then.

528 6 Q. And was there something that prevented you
7 from putting it on the planning meeting agenda
8 for October 4th so the public could have been
9 alerted to this?

10 A. I think it had to do with when Mrs. Cleaver
11 was going to be able to get back. She was
12 having trouble, she had storm damage to her
13 house, and because this was such an important
14 issue we felt that with her time on the board,
15 she deserved a right to be able to be there and
16 vote.

529 17 Q. So because it was such an important issue,
18 you decided to deviate from your standard
19 practice --

20 A. That's not --

530 21 Q. -- to give the public an opportunity to
22 know what was going on and be heard, is that
23 correct?

24 A. We deviated from our standard practice in
25 order to bring this up before a full board.

531 1 Q. Let's look at what's been marked as P-135,
2 and Matt, if you would turn to page 22, and
3 Mr. Buckingham, that's the Bates number 61646
4 in your binder.

5 A. P-135?

532 6 Q. P-132.

7 A. 132?

533 8 Q. Yes.

9 A. If you recall from my deposition, I have a
10 problem hearing sometimes and I don't pick up
11 everything. Okay, I'm here.

534 12 Q. If you turn to the page that's marked,
13 that's got a Bates stamp in the right-hand
14 corner that says 1646, the number of pages into
15 this document. I can help you find it if you
16 need me to.

17 A. I don't see it, I'm sorry.

535 18 Q. Your Honor, may I approach?

19 THE COURT: You may.

20 (Brief pause.)

21 A. Thank you.

536 22 Q. Now, Mr. Buckingham, if you would look at
23 the language on the bottom of the page? In
24 fact, I'm going to ask Matt to highlight the
25 language on the bottom of page. All the way

1 across if you can do that. This is the, this
2 was what was approved by the board on October
3 18th. This is the end result, isn't that right?

4 A. Yes.

537 5 Q. And there's a reference in there to, "Note,
6 the origins of life is not taught." Do you see
7 that?

8 A. Yes, I do.

538 9 Q. You know what that means, don't you?

10 A. Yes, I do.

539 11 Q. That means that the school teachers, the
12 science teachers are not permitted to teach
13 that one species came from another species,
14 correct?

15 A. We were talked about origins of life, yes,
16 and that was put there because some of the
17 teachers voiced concern that if we had
18 intelligent design included that that would
19 be, they would be forced to teach intelligent
20 design, and that was put in there to kind of
21 make them feel better about not having to teach
22 intelligent design. We kept telling them we
23 don't want them to teach it, but they kept
24 insisting if it was in the curriculum they had
25 to teach it. So that was put in there for their

1 benefit.

540 2 Q. But the words, when it says origins of
3 life, I guesses that the only point I want to
4 clarify with you, is that that means, that's a
5 reference to specifically the concept that one,
6 that any species originated or began with a
7 previous species, right? Common ancestor,
8 right?

9 A. Yes.

541 10 Q. Now, do you know what the district
11 curriculum advisory committee is?

12 A. Yes, I do.

542 13 Q. And that's a group that's comprised of
14 citizens and others who review curriculum
15 changes and help advise the board on when
16 there's going to be proposed curriculum changes?

17 A. Yes.

543 18 Q. Now, the district curriculum advisory
19 committee was not given a chance to meet and
20 voice its, have its voice heard on the subject
21 of this biology curriculum change that was
22 approved on October 18th, was it?

23 A. Understand that when I became the chair
24 of the curriculum committee I had almost no
25 experience on the school board. I was put in

1 charge of a curriculum committee, and I didn't
2 understand the process I was supposed to go
3 through. I didn't even know what this committee
4 was until after the fact.

544 5 Q. Okay, but the fact is it wasn't given a
6 chance to review the proposed curriculum
7 changes like it should have?

8 A. That's correct.

545 9 Q. But as a matter of fact a couple of members
10 from the board, the curriculum advisory
11 committee did submit comments for consideration
12 of the board on October 18th? Do you need a
13 minute, Mr. Buckingham? Do you need a glass
14 of water?

15 A. I'm just getting a lozenge. I'm okay.

546 16 Q. As a matter of fact -- tell me when you're
17 ready. You all set?

18 A. Go ahead.

547 19 Q. As a matter of fact a couple of members of
20 the district curriculum advisory committee did
21 make comment on an individual basis about the
22 proposed curriculum change, is that right?

23 A. I don't even know who was on the committee,
24 so I can't tell you that.

548 25 Q. Why don't you take a look in your book at

1 what's been marked P-151.

2 A. I'm there.

549 3 Q. Have you seen this document before?

4 A. I don't remember it.

550 5 Q. So you didn't know that at least two
6 members of the curriculum advisory committee
7 were against the proposed curriculum change or
8 at least wanted a chance to meet as a committee
9 and consider it. You're telling us you didn't
10 know that?

11 A. I wasn't aware of that.

551 12 Q. Now, earlier we talked about Mr. Renwich,
13 and you told us that on October 7th Mr. Renwich
14 was in favor of including a reference to
15 intelligent design in the biology curriculum.

16 A. Yes.

552 17 Q. But actually on October 18th he voted
18 against it, isn't that right?

19 A. Yes, he did.

553 20 Q. And he voted against it because the
21 teachers were against it, right?

22 A. I don't know why he voted against it.

23 I just know he did.

554 24 Q. Well, do you remember discussing this
25 at your deposition?

1 A. Actually I don't.

555 2 Q. Turn to page 122 of your deposition on
3 January 3rd.

4 A. 122?

556 5 Q. Yes. Line 15, tell me when you're there.

6 A. I'm there.

557 7 Q. I asked you the following questions and you
8 gave me the following answers -- line 12, I'm
9 sorry.

10 "QUESTION: Do you remember anything else
11 that was said at the meeting?

12 ANSWER: By?

13 QUESTION: Anybody about the board
14 resolution. For example, did Mr. Renwich say
15 why he wanted to take the word intelligent
16 design out?

17 ANSWER: He said he was in favor of the
18 concept of intelligent design, but he didn't
19 like the manner in which we brought it to where
20 it was. He wanted more involvement from the
21 teachers in the process.

22 QUESTION: He was upset that the two school
23 teachers were being disregarded, isn't that
24 correct?

25 ANSWER: In his opinion they were, but they

1 weren't.

2 QUESTION: That's what he was saying at the
3 meeting?

4 ANSWER: That was his perception.

5 QUESTION: Well, in what sense weren't they
6 being disregarded?

7 ANSWER: They weren't being disregarded.
8 That was just his perception that they were.

9 QUESTION: I know, but they didn't want
10 reference to intelligent design, correct?

11 ANSWER: That's true."

12 That was your testimony, wasn't it,
13 Mr. Buckingham?

14 A. Yes. Yes.

558 15 Q. Now, the sentence about including
16 intelligent design, the reference to intelligent
17 design in the biology curriculum, was added by
18 you and Mr. Bonsell and Mrs. Harkins at a
19 curriculum committee meeting not attended by
20 the teachers, specifically October 7th, correct?

21 A. That's true.

559 22 Q. And at the October 18th board meeting
23 Mrs. Spahr, who was the head of the science
24 department at the high school, says that the
25 board, the teachers had only agreed to Pandas

1 as a compromise to address your concerns that
2 the students have alternative materials to
3 review. You recall that, don't you?

4 A. I don't remember that.

560 5 Q. Well, why don't you look -- one second,
6 please.

7 (Brief pause.)

561 8 Q. So you're not saying she didn't say that.
9 You're just saying you don't remember, you're
10 not disputing that?

11 A. I don't remember hearing that.

562 12 Q. I'd like you to take a look at what's been
13 marked as P-798.

14 A. I'm sorry, I can't find it again. I'm
15 sorry, I have it. I have it.

563 16 Q. You have that document?

17 A. Yes, it's at the back.

564 18 Q. That's an article from the York Daily
19 Record on Wednesday, October 20th, 2004, isn't
20 that right?

21 A. Yes.

565 22 Q. By Lori Lebo and Joseph Maldonado?

23 A. Yes.

566 24 Q. Do you remember reading it at the time?

25 A. No, sir.

567 1 Q. Well, if you look in the last two
2 paragraphs of this article it says, "Both the
3 American Civil liberties Union and the Americans
4 United for the Separation of Church and State,
5 who say they were closely monitoring the
6 situation in Dover, points out that if the
7 school district were to lose a legal battle,
8 its taxpayers could end up footing the cost of
9 legal bills." Do you see that?

10 A. Yes, I do.

568 11 Q. And do you remember being told that?

12 A. Yes, I do.

569 13 Q. And in fact you said in response to that,
14 "'My response to that is what price is freedom,'
15 Buckingham said. 'Sometimes you have to take a
16 stand.'" That's what you said, isn't it?

17 A. Yes, it is.

570 18 Q. And in fact you said that to a reporter?

19 A. I don't remember if I said that to a
20 reporter. If they overheard me saying it, or
21 I don't know -- I remember saying it, but --

571 22 Q. But you might have said it to a reporter,
23 right?

24 A. I don't know who I said it to.

572 25 Q. And that was what you wanted to do,

1 Mr. Buckingham, is with respect to this biology
2 curriculum change, you wanted to take a stand?

3 A. That wasn't the stand I was talking about.
4 The stand was against the ACLU and the Americans
5 United for the Separation of Church and
6 State coming into areas and bullying the
7 municipalities into doing what they want done.

573 8 Q. Now, Mr. Buckingham, you were advised in
9 this process by two different organizations,
10 one was the Thomas More Law Center, and the
11 other was The Discovery Institute, isn't that
12 right? Right?

13 A. I was advised by the Thomas More Law
14 Center, and I was sent information by The
15 Discovery Institute.

574 16 Q. Well, there came a time in the process when
17 someone from The Discovery Institute contacted
18 you, right?

19 A. Yes.

575 20 Q. And that man's name, that was an attorney
21 by name of Seth Cooper, right?

22 A. That's true.

576 23 Q. And he sent you some materials?

24 A. Yes.

577 25 Q. With a DVD and a video and a book maybe?

1 A. Sounds right, yes.

578 2 Q. And then you gave those materials to
3 Dr. Nilsen, who gave them to the science
4 department, right?

5 A. I gave them to Dr. Nilsen and asked him to
6 give them to the science department, yes.

579 7 Q. And to your knowledge those materials were
8 never reviewed by the board, were they?

9 A. I don't know if anybody else on the board
10 looked at them or not. I think after the
11 science teachers were done with them, some
12 board members did take them and look at them.

580 13 Q. That's not what you told us at your
14 deposition, is it, Mr. Buckingham?

15 A. I don't know what I told you.

581 16 Q. Turn to page 101 of your deposition on
17 January the 3rd.

18 A. I'm there.

582 19 Q. Actually to give context we should probably
20 start on page 100, and I asked you beginning on
21 line 24, and I was referring to the materials
22 from The Discovery Institute:

23 "QUESTION: Where are they now?

24 ANSWER: They were turned over to

25 Dr. Nilsen. He turned them over to someone

1 in the science department. That's the last I
2 saw them. I donated those to the school.

3 QUESTION: Were they ever reviewed by the
4 board?

5 ANSWER: Not to my knowledge."

6 Do you remember giving that testimony then?

7 A. They weren't reviewed by the full board.

8 Individual members, I don't know for sure, but

9 I think a few individual members might have.

10 (Brief pause.)

583 11 Q. Let's turn to the second deposition, which
12 is marked the 31st, at page 27.

13 A. Page 27?

584 14 Q. Yes, sir.

15 A. I'm there.

585 16 Q. I asked you, let's begin on page 26 to give
17 this a little context. Line 22, didn't I ask
18 you the following questions and you gave the
19 follow answers:

20 "QUESTION: What was presented to the board
21 as a group to help them decide how to vote?

22 ANSWER: The books were presented to the
23 board. The information that was sent to us by
24 The Discovery Institute was provided to the
25 board.

1 QUESTION: The materials from The Discovery
2 Institute were not provided directly to the
3 board, correct?

4 ANSWER: I am a board member. They're
5 provided to me and I turn them over to the
6 school.

7 QUESTION to the administration, correct?

8 ANSWER: Yes.

9 QUESTION: You don't know what efforts, if
10 any, other than board members took to review
11 those materials?

12 ANSWER: I can't speak for them.

13 QUESTION: You don't know?

14 ANSWER: True."

15 A. That's true. I don't know that they did.
16 I'm just saying they may have. I don't know
17 that they did.

586 18 Q. Now, let's talk for just a minute about
19 not the substance but the circumstances of your
20 conversations with Mr. Cooper of The Discovery
21 Institute. After he called you, he introduced
22 himself on the phone, didn't he?

23 A. Yes, he did.

587 24 Q. And the first thing you said to him was
25 that you wanted legal advice, isn't that true?

1 A. I don't know if that was the first thing I
2 said, because I didn't know who or what he was.

588 3 Q. Well, if you look again at the March 31st
4 deposition transcript, on page 35?

5 A. I'm there.

6 THE COURT: Mr. Harvey, within about five
7 minutes if we could take a break?

8 MR. HARVEY: Yes, Your Honor, I'll have a
9 logical stopping point.

10 THE COURT: That's what I wanted. That's
11 fine, thank you.

12 BY MR. HARVEY:

589 13 Q. Let's start on page 34, line 4:

14 "QUESTION: What did you talk about with
15 Mr. Cooper?

16 ANSWER: He explained to me he was an
17 attorney, and I know when I found out he was an
18 attorney I wanted to get legal advice as far as
19 he could provide as far as intelligent design
20 was concerned, and we talked about intelligent
21 design and we talked about the gaps in Darwin's
22 theory of evolution.

23 QUESTION: Did he offer legal advice when he
24 called that first time?

25 ANSWER: Yes, he offered to represent us.

1 QUESTION: Was that the first thing he said?

2 ANSWER: That was not the first thing he
3 said, no. The first thing he said obviously
4 was, 'Hello, my name is Seth Cooper, and I'm an
5 attorney with The Discovery Institute. This
6 is what we're all about.'

7 (LAUGHTER FROM SPECTATOR GALLERY.)

8 A. When you started reading I hadn't gotten to
9 the page yet. I'm sorry, I'm lost where, I'm
10 not where you are.

590 11 Q. Please go to page 34.

12 A. I'm there. I wasn't there when you started
13 reading because --

591 14 Q. I apologize. It's disconcerting to hear
15 laughter and not knowing what everyone is
16 laughing about. Page 34, line 4.

17 A. Okay.

592 18 Q. Didn't I ask, didn't Mr. Rothschild ask
19 you the following questions and you give the
20 following answers:

21 "QUESTION: What did you talk about with
22 Mr. Cooper?

23 ANSWER: He explained that he was an
24 attorney, and I know when I found out he was
25 an attorney, I wanted to get legal advice as

1 far as he could provide as far as intelligent
2 design was concerned, and we talked about
3 intelligent design and we talked about the gaps
4 in Darwin's theories of evolution.

5 QUESTION: Did he offer legal advice when he
6 called that first time?

7 ANSWER: Yes, he offered to represent us.

8 QUESTION: Was that the first thing he said?

9 ANSWER: That was not the first thing he
10 said, no. The first thing he said obviously
11 was you was, 'Hello, my name is Seth Cooper,
12 and I'm an attorney with The Discovery
13 Institute. This is what we are all about.'
14 Don't ask me, I don't remember anymore. I said,
15 'Great, I could stand to talk to an attorney
16 right now.' I said, 'Here's what's going on,'
17 I see, 'Legally how do you see us?' And he told
18 me at that time that..."

19 And your counsel interjected so that you
20 wouldn't disclose potentially privileged
21 material, and then the next question was.

22 "QUESTION: Was the first thing after the
23 pleasantries, the first thing you said in
24 response to his introduction was, 'I want legal
25 advice'?"

1 ANSWER: To that effect, yes."

2 Do you see that?

3 A. Yes, I do.

593 4 Q. And that was the testimony you gave then on
5 March 31st?

6 A. Yes.

594 7 Q. And everything you talked about with
8 Mr. Cooper had to do with the legality of
9 intelligent design and the legalities of
10 Darwin's theory and the legalities of teaching
11 the gaps in Darwin's theory, isn't that correct,
12 Mr. Buckingham?

13 A. Would you say that again?

595 14 Q. Sure. Everything you talked about with
15 Mr. Cooper of The Discovery Institute had to
16 do with the legalities of intelligent design
17 and the legalities of Darwin's theory and the
18 legalities of teaching gaps in Darwin's theory,
19 isn't that true, Mr. Buckingham?

20 A. That was part of it, but he also gave me
21 some background of what intelligent design was.

596 22 Q. Well, he didn't give you any advice other
23 than legal advice, did he?

24 A. Not that I recall.

597 25 Q. And you didn't ask him for any kind of

1 advice other than legal advice, isn't that true?

2 A. We got into intelligent design and what it
3 was. How long was that? We didn't talk that
4 long.

598 5 Q. The question was you didn't ask him for any
6 other advice other than legal advice, isn't that
7 correct?

8 MR. GILLEN: Objection, Your Honor. I
9 simply think the question is unclear in that
10 there's a distinction being posited between the
11 legal advice and the discussion of intelligent
12 design, and it appears to me that they were
13 discussed together. If Mr. Harvey can make that
14 clear, then I think the witness can answer the
15 question.

16 MR. HARVEY: This was the basis for
17 Mr. Gillen's claim of privilege when we sought
18 to inquire of this witness at his deposition
19 about his communications with The Discovery
20 Institute. They claimed that they were seeking
21 legal advice and only legal advice, and they
22 received legal advice and only legal advice, and
23 on that basis they asserted the privilege, and
24 I'm just establishing here that that indeed is
25 the fact.

1 THE COURT: Well, is the privilege being
2 asserted?

3 MR. GILLEN: Yes, that's my purpose here is
4 to ensure that the question is clear so that
5 Mr. Buckingham doesn't -- as they state, it is
6 my understanding that the deposition testimony
7 substantiates that this discussion did take
8 place, there was discussion of intelligent
9 design and the law, but they were inextricably
10 interwoven, and that's --

11 THE COURT: Well, I don't think the question
12 was unclear, Mr. Gillen. It wasn't unclear to
13 me. Do you want to read it back, Wes, please?

14 (The record was read back by the reporter.)

15 THE COURT: You can answer the question,
16 sir. The objection is overruled.

17 THE WITNESS: Yes.

18 BY MR. HARVEY:

599 19 Q. In other words, you didn't seek any other
20 type of advice other than legal advice. That's
21 a true statement, correct, what I just said?

22 A. That's true, but also woven there was
23 discussion on intelligent design.

600 24 Q. Well, he didn't give you any kind of advice
25 other than legal advice, did he? Or are you

1 telling us now that he did give you some other
2 advice other than legal advice?

3 A. I think it was part and parcel legal
4 advice, but intelligent design was part of it.

601 5 Q. That's what we discussed before, you
6 discussed the legalities of intelligent design,
7 correct?

8 A. Along with what it was.

602 9 Q. And he didn't give you any kind of advice
10 about that other than legal advice, isn't that
11 correct?

12 A. Well, what contemplates legal advice?

13 I don't understand that. It's --

603 14 Q. Well, at your deposition you told us that
15 he didn't give you any kind of advice other than
16 legal advice. Isn't that true, Mr. Buckingham?

17 A. If you include intelligent design in there,
18 yes, that's true.

604 19 Q. Well, just I guess we should be clear here,
20 let's go to page 35 of your March 31st
21 transcript.

22 A. I'm there.

605 23 Q. Line 5. Are you there?

24 A. Yes, sir.

606 25 Q. "Did you ask for any advice other than

1 legal advice?" That was the question.

2 "ANSWER: Everything we talked had to do
3 with legalities of intelligent design and
4 Darwin's theory and the gaps. That was about
5 it.

6 QUESTION: It was only about the legalities
7 of Darwin's theory?

8 ANSWER: That's not what I said. I said the
9 legality of Darwin's theory, gaps, teaching the
10 gaps, and intelligent design being put into the
11 curriculum."

12 That was the testimony you gave on that
13 day, isn't it?

14 A. Yes.

607 15 Q. And you talked with Mr. Cooper of The
16 Discovery Institute several more times after
17 that?

18 A. We might have had two more, they were real
19 quick discussions. There wasn't much to them.

608 20 Q. And at least some of those calls were
21 between the June meetings and the October 18th
22 meeting?

23 A. I don't remember when they were.

609 24 Q. Well, all of the calls that you had with
25 Mr. Cooper concerned legal advice, isn't that

1 true?

2 A. Yes.

610 3 Q. And he never gave you any kind of
4 educational advice, did he?

5 A. Woven in amongst the legal advice was a
6 discussion of what intelligent design was.
7 Again, what is legal advice?

611 8 Q. If you'd please go to page 38 of your
9 March 31st transcript?

10 A. I'm there.

612 11 Q. Beginning on page 38, line 4:

12 "QUESTION: In those subsequent phone calls,
13 were they like the first phone call, always for
14 legal advice?

15 ANSWER: Yes.

16 QUESTION: You were always asking for legal
17 advice?

18 ANSWER: It was my understanding that once
19 we had a legal advice umbrella so to speak, our
20 calls were under that umbrella.

21 QUESTION: Did you understand the actual
22 advice he was giving to be legal advice?

23 ANSWER: Yes.

24 QUESTION: He didn't give you restaurant
25 recommendations?

1 ANSWER: No.

2 QUESTION: And even into the discussion of
3 the curriculum issue you always understood that
4 to be legal advice?

5 ANSWER: Yes.

6 QUESTION: Not educational advice?

7 ANSWER: No."

8 That was your testimony, wasn't it?

9 A. Yes.

10 MY HARVEY: And I just have one or more two
11 questions, Your Honor, before we go to break.

12 THE COURT: Go ahead.

13 BY MR. HARVEY:

613 14 Q. And you recall that your attorneys at that
15 deposition would not permit us to discover the
16 substance of your communications with The
17 Discovery Institute on the grounds of attorney
18 client privilege between Mr. Cooper of The
19 Discovery Institute and you as a member of the
20 Dover area school district board of directors
21 and head of its curriculum committee, do you
22 remember that?

23 A. Yes.

24 MR. HARVEY: This is a good time to break
25 for lunch, Your Honor.

1 THE COURT: Let's take our lunch break at
2 this point. We will reconvene at 1:30 p.m.
3 this afternoon for our afternoon session.
4 We'll be in recess until then. Thank you.

5 (End of morning session at 12:05 p.m.)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Tammy Kitzmiller, et al. vs. Dover Schools

2 4:04-CV-02688

3 Trial Day 16, Morning Session

4 27 October 2005

5

6

7

8 I hereby certify that the proceedings

9 and evidence are contained fully and accurately

10 in the notes taken by me on the trial of the

11 above cause, and that this copy is a correct

12 transcript of the same.

13

14

15

16 s/ Wesley J. Armstrong

17

Wesley J. Armstrong

18

19

Registered Merit Reporter

20

21

22 The foregoing certification of this

23 transcript does not apply to any reproduction

24 by any means unless under the direct control

25 and/or supervision of the certifying reporter.