



I N D E XWITNESSES

<u>For - Plaintiffs:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dr. Brian Alters		3	60	65
Cynthia Sneath	75	101		
Steven Stough	109			

1 THE COURT: We'll pick up then with  
2 Mr. Muise's cross-examination of Dr. Alters.

3 MR. MUISE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MUISE:

6 Q. Good afternoon, Dr. Alters.

7 A. Good afternoon.

8 Q. Sir, you're not a scientist. Correct?

9 A. Correct.

10 Q. And you've never actually taught biology in  
11 a public high school. Correct?

12 A. Correct.

13 Q. You have no specific training or experience  
14 with regard to the Pennsylvania standards for teaching  
15 science. Isn't that correct?

16 A. Correct.

17 Q. Sir, in your direct, you indicated that you  
18 coauthored a biology textbook, a college-level biology  
19 textbook entitled, *Biology: Understanding Life*. Is  
20 that correct?

21 A. Yes.

22 Q. And your coauthor was your wife?

23 A. Yes.

24 Q. And you and your wife hold Ph.D.s in  
25 education. Correct?

1 A. Correct.

2 Q. And neither you nor your wife are  
3 scientists. Correct?

4 A. Correct.

5 Q. Now, I gather from your testimony and what  
6 you've provided in your expert reports in this case  
7 that one of your principal concerns is with students  
8 bringing misconceptions to the science classroom. Is  
9 that accurate?

10 A. Yes.

11 Q. And you have studied students'  
12 misconceptions concerning evolution. Correct?

13 A. Yes.

14 Q. You haven't done, yourself, any studies as  
15 far as how students reach these misconceptions. Is  
16 that correct?

17 A. I've done studies in interviewing  
18 thousands -- well over a thousand students in how they  
19 report learning those misconceptions.

20 Q. But in terms of how they reach those  
21 misconceptions, you haven't done any studies on that?

22 A. It's a technical point here. It's a little  
23 complex. To be able to do a study on how they would  
24 learn those misconceptions, it might be done something  
25 as follows: You might have to take a couple hundred

1 students, randomly assign them into two groups, a  
2 control group, a test group. The control group would  
3 be evolution only. The test group would be evolution  
4 and intelligent design, say.

5 And to be able to run that and then run it  
6 through and see what the difference is, most  
7 university professors that I'm aware of at most  
8 universities in North America that I'm aware of,  
9 certainly my universities, require you to go through a  
10 human subjects review board to approve your research  
11 ahead of time on human subjects.

12 They ask in there, is there any deception of  
13 the students, and I would have to respond, yes, we're  
14 going to teach that intelligent design in the  
15 treatment group is an alternative scientific theory  
16 and teach it as science to the students. They then  
17 respond, do you predict that the good of the  
18 experiment will outweigh the detriment to the  
19 deception of the students, and I'd have to respond,  
20 no, I don't think so.

21 So that type of research that you're  
22 requesting is pretty much considered unethical by  
23 ethical review boards for human subjects.

24 Q. So, again, sir, the answer is that you have  
25 not done any studies as far as how students reach

1 misconceptions?

2 A. The type of experiment I just described, no,  
3 I haven't done any like that.

4 MR. MUISE: May I approach, Your Honor?

5 THE COURT: You may approach.

6 BY MR. MUISE:

7 Q. Sir, I'm handing you what is your deposition  
8 that you gave in this case on June 2nd, 2005, and I'd  
9 ask you to turn to Page 104, please.

10 A. Okay.

11 Q. Could you read the question beginning at  
12 Line 11 all the way through your answer at Line 14?

13 A. (Reading:) Have you done any studies as far  
14 as how students reach misconceptions? No. Mr. White:  
15 Why don't we --

16 Q. That's fine, sir. That was through Line 14.  
17 Correct?

18 A. Yes.

19 Q. Was that a truthful answer you gave in your  
20 deposition?

21 A. Yes.

22 Q. Thank you, sir. Now, sir, in preparation  
23 for the opinions that you intend to offer or that you  
24 offered in this particular case, you have not been to  
25 the Dover science class. Correct?

1 A. Correct.

2 Q. And you've never attended or witnessed a  
3 ninth-grade biology class at Dover High School?

4 A. Correct.

5 Q. You have not spoken to any of the teachers  
6 at Dover High School regarding the policy at issue?

7 A. I have not.

8 Q. You have not spoken to any of the parents at  
9 Dover High School regarding the policy at issue?

10 A. I have not.

11 Q. You have not spoken to any of the students  
12 at Dover High School regarding the policy at issue?

13 A. I have not.

14 Q. You have not been in the ninth-grade biology  
15 class when the four-paragraph statement which we saw  
16 here on the screens was read to the students. Is that  
17 correct?

18 A. That's correct.

19 Q. You have not witnessed any students'  
20 reaction to hearing this four-paragraph statement that  
21 you testified to. Is that correct?

22 A. That's correct.

23 Q. So, sir, you have no knowledge concerning  
24 whether this four-paragraph statement, which takes  
25 approximately one minute to read, is read with the

1 tone, the inflection, the facial expression, and the  
2 gestures that you employed today in court to read the  
3 statement. Is that correct?

4 A. That's correct.

5 Q. And, sir, you haven't interviewed any  
6 students who have heard this one-minute statement to  
7 find out what their views are with regard to that  
8 statement. Is that correct?

9 A. Correct.

10 Q. And you haven't interviewed any of the  
11 school board members --

12 A. No.

13 Q. -- regarding the intention of this  
14 statement. Correct?

15 A. Correct.

16 Q. And you've never spoken with any of the  
17 administrators at Dover High School regarding this  
18 statement. Correct?

19 A. Correct.

20 Q. And, sir, you don't have any studies to show  
21 that the reading of this statement to students has  
22 been detrimental for their education. Correct?

23 A. I don't have studies to show that any  
24 pseudoscience being taught to students in this manner  
25 is detrimental, correct.



1 Q. And so the answer to that specific question  
2 with regard to the statement is a yes?

3 A. Yes.

4 Q. And you have also not spoken to any students  
5 or parents who have indicated that their education at  
6 Dover High School has been harmed by hearing this  
7 statement. Is that correct?

8 A. Correct.

9 Q. So you've never been to the Dover High  
10 School library. Correct?

11 A. Correct.

12 Q. You haven't witnessed any students reading  
13 the *Pandas* book. Is that correct?

14 A. Correct.

15 Q. You haven't interviewed any students  
16 regarding their reaction to the *Pandas* book. Is that  
17 correct?

18 A. Correct.

19 Q. And you don't even know, actually, if any  
20 students have even looked at the *Pandas* book. Is that  
21 correct?

22 A. Correct.

23 Q. Now, I believe you indicated already to my  
24 initial questions that you don't consider yourself an  
25 expert on state academic standards. Is that correct?

1 A. Correct.

2 Q. And with regard to this case, you were asked  
3 in your deposition whether you know what a school  
4 board's obligation is regarding standards in  
5 Pennsylvania, and you answered no. Is that accurate?

6 A. Accurate.

7 Q. And when you were asked, do you know in  
8 Pennsylvania how the school board would comply with  
9 the standards set forth in the State of Pennsylvania,  
10 you answered no. Is that correct?

11 A. Correct.

12 Q. And preparing your expert report in this  
13 case and prior to your deposition, you didn't compare  
14 the Dover curriculum with the state academic  
15 standards. Isn't that correct?

16 A. Correct.

17 Q. I believe you testified at your deposition  
18 that you just did a quick examination of the state  
19 standards concerning evolution and saw that there were  
20 some similarities between the Dover curriculum and the  
21 state standards. Is that accurate?

22 A. Accurate.

23 Q. So, sir, do you know if Darwin's theory of  
24 evolution will be taught in the ninth-grade biology  
25 class consistent with the Pennsylvania academic

1 standards?

2 A. I have no way of knowing that.

3 Q. Sir, would it be fair to say that your  
4 expertise does not involve evaluating policy in the  
5 context of state academic standards?

6 A. Correct.

7 Q. Now, you testified regarding the state  
8 academic standards this morning, in particular, one of  
9 the sections your attorney pointed out to you where  
10 the standard indicates, quote, Critically evaluate the  
11 status of existing theories, end quote, and then they  
12 included a parenthetical with five theories, one of  
13 them being the theory of evolution. Do you recall  
14 that?

15 A. Yes.

16 Q. Do you consider that to be a valid  
17 educational standard?

18 A. Yes, as long as one understands what it  
19 means in education. And what it means in education,  
20 the word "evaluate" is used 54 times in the  
21 Pennsylvania state standards just in the science  
22 section.

23 And "evaluate" means two things for  
24 educators. One is to have the student hone their  
25 tools to be able to critically evaluate something. It

1 doesn't mean trash something, it means critically  
2 evaluate. Two plus two equals four. We want them to  
3 critically evaluate and understand what are the  
4 mathematical reasons to come to four. So it's not  
5 just trashing. It's not saying, two plus two equals  
6 five and then the teacher lets that end up to be that  
7 way.

8           The other aspect of it that educators  
9 appreciate when they see the word "evaluate," again,  
10 54 times used in the Pennsylvania state standards just  
11 within the science section, is that "evaluate" also  
12 means so that the teacher can see how the student is  
13 thinking when they're critically evaluating something.  
14 So if the student then comes back and says, you know,  
15 there's good reason that two plus two equals five, the  
16 teacher then can dig in and try to diagnose the  
17 misconceptions that are either direct or underpin why  
18 the student thinks two plus two equals five.

19           Q. That's a valid educational objective?

20           A. Yes.

21           Q. Sir, is it your understanding that Dover is  
22 a standards-driven district?

23           A. That's my understanding.

24           Q. Do you know what a standards-driven district  
25 means?

1           A.    I don't know what they mean by the term, no,  
2           but I can guess.

3           Q.    We don't need you to guess here, sir. Let  
4           me ask you if you understand this, that as a  
5           standards-driven district, the class instruction  
6           focuses on preparing students to achieve proficiency  
7           in the standard-based assessments. Do you have that  
8           understanding?

9           A.    Yes.

10          Q.    Did you get that understanding from reading  
11          the statement?

12          A.    I don't recall.

13          Q.    Is it your understanding that because Dover  
14          is a standards-driven district, students will not be  
15          tested on intelligent design?

16          A.    I don't know if it's because of that, but my  
17          understanding is they will not be, something I've read  
18          in the -- concerning the overall policy. I remember  
19          seeing that.

20          Q.    Again, it goes back to, I guess, your lack  
21          of understanding fully of what it means to be a  
22          standards-driven district?

23          A.    No, I think I just read it somewhere in the  
24          policy where it said that they'll not be tested on  
25          intelligent design.

1           Q.    But you don't know if that has anything to  
2 do with the fact that they're a standards-driven  
3 district?

4           A.    I imagine something could be a  
5 standards-driven district and not necessarily be  
6 examined on every subject that's within the standards.  
7 It would be an awful long exam.

8           Q.    Is it your understanding that the biology  
9 book that was purchased and that is being used in the  
10 ninth-grade biology class is the Miller and Levine  
11 2004 version of *Biology*?

12          A.    Yes.

13          Q.    Have you had a chance at all to review that  
14 book?

15          A.    No.

16          Q.    Dr. Kenneth Miller, who is also an expert in  
17 this case, who coauthored that book, seemed to be  
18 rather fond of it. Do you have any reason to question  
19 his opinions about his book and what's covered in it?

20          A.    No special reason, no.

21          Q.    Do you have any reason to doubt that this  
22 book provides thorough coverage of Darwin's theory of  
23 evolution?

24          A.    No.

25          Q.    Do you have any reason to doubt that this

1 biology book presents Darwin's theory of evolution in  
2 a manner that's consistent with this theory's status  
3 or standing in the scientific community?

4 A. No.

5 Q. So you do understand that *Pandas* is not a  
6 required textbook for the Dover biology class.

7 Correct?

8 A. Correct.

9 Q. And I believe at the time you formed your  
10 opinions in this case and at your deposition, you  
11 didn't know whether this book was going to be kept in  
12 the science classroom or in the library. Is that --

13 A. Correct.

14 Q. Sorry?

15 A. Correct.

16 Q. And have you come to learn that this book is  
17 being placed in the library?

18 A. I believe I heard that somewhere, but I  
19 don't recall where.

20 Q. Do you recall in your deposition you stated  
21 that if you lived in the area and sent a child to the  
22 Dover school, you would have no problem with *Pandas*  
23 being in the school library?

24 A. I have no problem with virtually any book  
25 being in a school library or a public library where

1 the local people and/or school or school board, et  
2 cetera, determines that these books will be in there.  
3 No, I have no problem with that.

4 Q. That would include the *Pandas* book.  
5 Correct?

6 A. Correct.

7 Q. Sir, that statement that you read here today  
8 in court, are you aware that that statement was  
9 modified in June?

10 A. Which statement is that?

11 Q. That four-paragraph statement that you read  
12 that is being read to the students.

13 A. Yes, I heard it was changed, but I don't  
14 recall to what.

15 Q. Do you know if it was changed to indicate  
16 that *Pandas* was, in fact, going to be put in the  
17 library?

18 A. No, I don't recall that.

19 Q. Have you come to any understanding that the  
20 policy was changed to indicate that books in addition  
21 to *Pandas* are going to be placed in the library?

22 A. Any books?

23 Q. Books regarding intelligent design.

24 A. I'm not following your question. Sorry.

25 Q. Well, my question is regarding the revised



1 statement. It was revised in June, as the evidence  
2 will demonstrate here. And I'm asking whether you,  
3 first of all, understood that it was revised to  
4 indicate that *Pandas* was going to actually be put in  
5 the school library, and I believe you testified you  
6 had heard something about that. Is that correct?

7 A. Heard, read.

8 MR. WALCZAK: I'm going to object. The  
9 witness already stated that he does not have a  
10 recollection of how the June statement was changed,  
11 and perhaps if Mr. Muise is going to continue to ask  
12 Dr. Alters questions, he could give him a copy of that  
13 statement.

14 THE COURT: Well, he has him on cross. He  
15 doesn't have to give him a copy of the statement. But  
16 he seems to be rather vague about that. So you can --

17 MR. MUISE: I just want to see the  
18 understanding or knowledge that he has. Obviously  
19 it's going to go to how he formed his opinions in this  
20 case.

21 THE COURT: Well, you may get some "I don't  
22 know" answers, but you don't have to show him the  
23 statement. So I'll overrule the objection to that  
24 extent. You can continue with your cross.

25 BY MR. MUISE:

1 Q. Do you have any understanding, sir, that the  
2 statement was modified to indicate that there were  
3 going to be books in addition to *Pandas* on intelligent  
4 design that will be placed in the library?

5 A. No.

6 Q. So it would be fair to say that you don't  
7 know whether or not any additional books are being  
8 placed in the library that might be critical of  
9 intelligent design. Is that accurate?

10 A. That's accurate.

11 Q. Sir, critical thinking is a legitimate  
12 pedagogical goal for science education, is it not?

13 A. It is.

14 Q. And education in the science classrooms in a  
15 public high school should encourage critical thinking?

16 A. Yes.

17 Q. It is good science pedagogy to encourage  
18 critical thinking?

19 A. Yes.

20 Q. And critical thinking includes being able to  
21 take a proposition, concept, and idea and be able to  
22 look at it from different points of view?

23 A. Scientific concept, proposition, if we're  
24 talking about science education. I'm not an expert in  
25 music education or art, but within the realm of

1 science education, as long as you preference it with  
2 science.

3 Q. So critical thinking -- let me reask the  
4 question so we can have the record clear. Critical  
5 thinking includes being able to take a scientific  
6 proposition, concept, or idea and be able to look at  
7 it from different points of view?

8 A. Different scientific points of view, yes.

9 Q. A part of critical thinking is to question  
10 fundamental theories in science?

11 A. Not trash them. It depends on what you mean  
12 by "question."

13 Q. Sir, if you'd open your deposition to Page  
14 175, please.

15 A. Okay.

16 Q. And if you'd read from Line 3 with the  
17 question down through and including Line 12, which is  
18 your answer to two questions.

19 A. (Reading:) Is a part of critical thinking  
20 to the question fundamental -- is a part of critical  
21 thinking to question fundamental theories? Answer: I  
22 think critical thinking can be applied to all areas of  
23 science. How far do you want me to go?

24 Q. Read the next question and answer, please.

25 A. Does that include questioning fundamental

1 theories in science? Yes.

2 Q. Is that a truthful answer?

3 A. Yes.

4 Q. Would you consider the theory of evolution  
5 to be a fundamental theory in science?

6 A. Evolutionary theory is more than just the  
7 theory of evolution. You have the occurrence of  
8 evolution and the mechanisms of evolution. But yes.

9 Q. Sir, would you agree that critical thinking  
10 involves comparing equivalent ideas, scientific ideas,  
11 and comparing them with the evidence in some --  
12 comparing them sometimes -- comparing sometimes  
13 misconceptions with the evidence?

14 A. Yes.

15 Q. You would agree that all things in science  
16 should be looked at critically?

17 A. It might be a waste of time, but, yes, in  
18 principle, if one had that amount of time.

19 Q. Would you agree that the purpose of a high  
20 school science course is not to train scientists but  
21 to contribute to the liberal education of students?

22 A. Yes.

23 Q. Now, we talked about misconceptions. You  
24 testified about it, and I had asked you about that  
25 being sort of a central focus of your testimony.

1 Correct?

2 A. Yes.

3 Q. I want to explore a little bit more this  
4 idea of misconceptions. I believe on direct you  
5 indicated that you reviewed one of the 1990 versions  
6 of the Miller and Levine *Biology* textbook?

7 A. Late 1990s. I don't recall the year.

8 Q. Do you recall if it was the elephant book?

9 A. I don't recall.

10 Q. Well, sir, there's evidence in this case  
11 that the 1995 version of the *Biology* text coauthored  
12 by Dr. Miller stated the following: Quote, It is  
13 important to keep this concept in mind, evolution is  
14 random and undirected, end quote. Sir, is evolution  
15 random and undirected?

16 A. It would be my position that would be  
17 outside the realm of science. I would consider that  
18 philosophy.

19 Q. So if a student believed that this was a  
20 scientific claim, that would be a misconception?

21 A. I believe so.

22 Q. Would it be a misconception for a student in  
23 the ninth-grade biology class to believe that Darwin's  
24 theory of evolution is an absolute truth?

25 A. We would never use the word "absolute

1 truth." I don't agree with your statement. We don't  
2 use the word "truth" in science. Science is  
3 tentative. It's always open in principle to new  
4 corrections, new data coming in. I can't answer a  
5 question that has the word "truth" in it applied to  
6 science.

7 MR. MUISE: May I approach the witness, Your  
8 Honor?

9 THE COURT: You may.

10 BY MR. MUISE:

11 Q. Sir, I've handed you a copy that's been  
12 marked as Defendants' Exhibit 214, which is the  
13 Prentice Hall *Biology* book by Miller and Levine. I  
14 direct your attention to Page 15, please.

15 A. Yes.

16 Q. Can you see the beginning of the second full  
17 paragraph? If you could read for me the first  
18 sentence where it begins, A useful.

19 A. A useful theory may become the dominant view  
20 among the majority of scientists, but no theory is  
21 considered absolute truth.

22 Q. Do you agree with that statement?

23 A. I wouldn't have used the word "absolute  
24 truth," but in principle, I agree with it, yes.

25 Q. So in principle that statement --

1           A.    The problem is that truth to most children  
2 who read this will think that means an absolute. It  
3 never changes, it will always be the truth forever.  
4 Science, in principle, is always open to new data  
5 coming in, and it changes. So I think the author here  
6 is trying to communicate to 15-year-olds. This isn't  
7 like the truth that you're used to where things stay  
8 the same all the time. Science is open to the new  
9 data coming in.

10           Q.    Does that statement create a misconception?

11           A.    I think possibly somewhere, maybe in the  
12 rest of the text or maybe with the biology teacher,  
13 they might talk about how "truth" is generally not  
14 used by scientists. The people who wrote this book  
15 are communicating and trying to teach children,  
16 15-year-old children.

17                    We probably wouldn't find the "T" word in  
18 their scientific writing and journals, but we find the  
19 "T" word here in how they communicate using the  
20 language that 15-year-olds understand. That's what I  
21 think the authors are trying to do. So it may create.

22                    As you said before, we would have to do some  
23 experiments on this to see if it creates a -- I think  
24 it's reasonable to believe that it would not create a  
25 misconception among students. And I would hope that

1 if a student started to use the word "truth" in the  
2 biology classroom, that is when the teacher could say,  
3 oh, but that's a misconception, we don't use that, and  
4 then explain why.

5 Q. Well, placing this in the context of  
6 communicating to your 15-year-old ninth-grade biology  
7 student, in principle, would it be a misconception for  
8 a student in a ninth-grade biology class to believe  
9 that Darwin's theory of evolution was the absolute  
10 truth?

11 A. Well, there are so many things wrong with  
12 that question. You have "believe," which you're going  
13 to have to define for me. And then we go back to the  
14 "absolute truth" again. "Believe" is defined various  
15 different ways. It's a level of confidence in most  
16 ways, is the word "believe." What level of confidence  
17 do you have in this? What level of confidence do you  
18 have concerning its absolute truth? That is one way.  
19 So if you reask your question, I'll try to do my best  
20 to answer it.

21 Q. What if we change the word from "believe" to  
22 "understands"?

23 A. Okay. Could you restate the question then?

24 Q. Would it be a misconception for a student in  
25 a ninth-grade biology class to understand that



1 Darwin's theory of evolution was a fact -- excuse me,  
2 Darwin's theory of evolution is an absolute truth?

3 A. "Absolute truth," yes, used in the way a  
4 15-year-old would understand it, that would be a  
5 misconception, yes.

6 Q. In keeping with our 15-year-old  
7 understanding, because we are talking about a  
8 ninth-grade biology class, would it be a misconception  
9 for a student in a ninth-grade biology class to  
10 understand that Darwin's theory of evolution was a  
11 fact?

12 A. No, it wouldn't be a misconception at all.  
13 It would be accurate.

14 Q. So you would disagree then with Dr. Miller's  
15 opinion on that issue?

16 A. I doubt we disagree, but you're stating that  
17 we do, so I imagine you'll point that out to me.

18 Q. Well, if a student understood that science  
19 has answered all questions regarding the theory of  
20 evolution, would that be a misconception?

21 A. Yes.

22 Q. If a student believed that science has  
23 solved the origin of life question, would that be a  
24 misconception?

25 A. Yes.

1 Q. Sir, you would agree that all scientific  
2 theories are tentative?

3 A. Yes.

4 Q. Including Darwin's theory of evolution?

5 A. Yes.

6 Q. And to say that a theory is tentative means  
7 that as new information comes in, scientists should  
8 accept that new information and, if necessary, modify  
9 existing theories?

10 A. Yes.

11 Q. And that, again, would include Darwin's  
12 theory of evolution?

13 A. Yes.

14 Q. If a student understood that Darwin's theory  
15 of evolution was not tentative, would that be a  
16 misconception?

17 A. Yes.

18 Q. Would it be good science pedagogy to tell  
19 students that Darwin's theory of evolution continues  
20 to change as new data are gathered and new ways of  
21 thinking arise?

22 A. If you're singling out evolution only and  
23 not saying that all of science does that, then that  
24 might be problematic, because what you might be  
25 engendering in students at the time is a misconception

1 that somehow evolution is a special science, that it's  
2 not like the rest of science. So your question can be  
3 answered in two ways, yes and no, or I like better,  
4 maybe.

5 Q. Sir, if you could turn to Page 386 in  
6 Defendants' Exhibit 214. And there's a subheading  
7 entitled, Strengths and Weaknesses of Evolutionary  
8 Theory.

9 A. Yes.

10 Q. If you look at the second full paragraph,  
11 could you please read the first sentence?

12 A. (Reading:) Like any scientific theory,  
13 evolutionary theory continues to change as new data  
14 are gathered and new ways of thinking arise.

15 Q. And, again, that's a statement from out of  
16 the Miller and Levine *Biology* textbook?

17 A. Yes, within the context of the evolution  
18 chapter in the book, yes.

19 Q. Does that statement create a misconception  
20 of students?

21 A. Within the context of this chapter, within  
22 the context of reading this, I don't think so.

23 Q. Do you know if there are any other theories  
24 that are addressed in this book that have a subheading  
25 entitled, Strengths and Weaknesses?

1 A. I haven't read the book.

2 Q. So the answer is no, you don't know?

3 A. I don't know. I haven't read the book.

4 Q. Would it be good science pedagogy to tell  
5 students that the fossil record is incomplete?

6 A. That would be fine in the context of a  
7 discussion regarding the fossil record and evolution,  
8 yes.

9 Q. Would you agree that Darwin's theory of  
10 evolution is incomplete?

11 A. Darwin's theory of evolution is natural  
12 selection. Some parts of it, yeah, I'll go ahead and  
13 say yes.

14 Q. So it would be a misconception for a  
15 ninth-grade biology student to believe otherwise?

16 A. Probably. I would have to think about that  
17 one. That's a more complex question.

18 Q. But right now your answer is "probably"?

19 A. Yes.

20 Q. Sir, I'm going to ask you if you agree with  
21 this National Science Education Standard. I believe  
22 it's listed as 1996c. Quote, In the areas where data  
23 or understanding are incomplete, such as the details  
24 of human evolution or questions surrounding global  
25 warming, new data may well lead to changes in current

1 ideas or resolve current conflicts, end quote. Are  
2 you familiar with that standard?

3 A. I'm not familiar with that quote, but I'm  
4 familiar with the National Science Education  
5 Standards, yes.

6 Q. Well, would it be a misconception for a  
7 ninth-grade biology student to understand that  
8 scientists completely understand the details of human  
9 evolution?

10 A. I don't know if scientists completely  
11 understand any area of science.

12 Q. And that would include the details of human  
13 evolution?

14 A. Of course.

15 Q. Now, in your deposition you indicated that  
16 you do not like the word "gap" because it sounds like  
17 something is missing that naturally should be there?

18 A. That was just a personal observation. It's  
19 not a word that I've thought about a lot.

20 Q. Do you recall testifying as such in your  
21 deposition?

22 A. I don't doubt at all that I did. I don't  
23 recall it, but I don't doubt it.

24 Q. Well, would it be good science pedagogy to  
25 tell students that the leap from nonlife to life is

1 the greatest gap in scientific hypotheses of Earth's  
2 early history?

3 A. Could you repeat that?

4 Q. Would it be good science pedagogy to tell  
5 students that the leap from nonlife to life is the  
6 greatest gap in scientific hypotheses of Earth's early  
7 history?

8 A. I don't know if it is. I can't answer that  
9 question.

10 Q. Do you know if that is an accurate  
11 statement, the leap from nonlife to life is the  
12 greatest gap in scientific hypotheses of Earth's early  
13 history?

14 A. I don't know. I suspect it is, but I don't  
15 know.

16 Q. You suspect that it's true?

17 A. I suspect it's true.

18 Q. If you suspect that it's true, would you  
19 suspect that it wouldn't create a misconception?

20 A. My level of confidence is very low on my  
21 suspicion concerning that, so I wouldn't bet much  
22 money on it.

23 Q. Is there a reason why your confidence is  
24 low?

25 A. I would have to think about it for a while,

1 maybe even consult some scientists.

2 Q. Well, maybe if you look at Page 425 in  
3 Defendants' Exhibit 214.

4 A. 425?

5 Q. Yes.

6 A. Yes.

7 Q. If you could read that first sentence under  
8 The Puzzle of Life's Origin on Page 425.

9 A. (Reading:) A stew of organic molecules is a  
10 long way from a living cell, and the leap from nonlife  
11 to life is the greatest gap in scientific hypotheses  
12 of Earth's early history.

13 Q. Are you more firm in your beliefs at this  
14 point?

15 A. My confidence level has increased, yes. I  
16 understand that Ken Miller is an excellent scientist.

17 Q. So, again, my question would be, is it good  
18 science pedagogy to tell students that the leap from  
19 nonlife to life is the greatest gap in the scientific  
20 hypotheses of Earth's early history?

21 A. My confidence level has gone up from what it  
22 was previous to reading this, but it's still not up --  
23 I would like to have some more evidence.

24 Q. Is it proper science pedagogy to tell  
25 students that Darwin's theory is a well-tested

1 explanation that unifies a broad range of  
2 observations?

3 A. Yes.

4 Q. Sir, you would acknowledge that there are  
5 weaknesses in the theory of evolution. Correct?

6 A. Could you repeat the question, please?

7 Q. Would you acknowledge that there are  
8 weaknesses in the theory of evolution?

9 A. There are weaknesses in the mechanisms, the  
10 understanding of the mechanisms for evolution. I do  
11 not know of any evidence against the occurrence of  
12 evolution.

13 Q. You've used that term "occurrence of  
14 evolution" quite a bit in your direct testimony.  
15 Correct?

16 A. Yes.

17 Q. Now, when you're referring to "occurrence of  
18 evolution," is that you're referring to the notion of  
19 change over time, that life has changed over time?

20 A. Roughly, yes.

21 Q. And you distinguish that from the mechanisms  
22 of evolution such as natural selection?

23 A. Correct.

24 Q. You would agree that we do not have  
25 overwhelming consensus yet on the mechanisms of



1 evolution?

2 A. Correct.

3 Q. And so in your direct testimony when you  
4 were claiming that you weren't aware of any scientific  
5 organization or science textbook that indicated any  
6 controversy regarding the occurrence of evolution, you  
7 were referring to evolution in the sense of change  
8 over time. Correct?

9 A. That evolution occurred, yes.

10 Q. As opposed to the mechanisms of evolution  
11 such as natural selection. Correct?

12 A. Correct.

13 Q. Now, in your deposition, you claimed that  
14 the -- when you were asked questions about the  
15 strengths of the theory of evolution, you referred to  
16 the structural similarity in embryology as being one  
17 of the strengths of evolution. Is that correct?

18 A. Yes.

19 Q. When you were referring to the structural  
20 similarity in embryology, were you referring to the  
21 famous or infamous Haeckel embryos?

22 A. No, just in general.

23 Q. Are you familiar with the Haeckel embryos?

24 A. I've heard some things about it, yes.

25 Q. And those drawings have appeared in biology

1 texts for many years?

2 A. That's what I understand.

3 Q. And also these drawings were later found out  
4 to be an actual fraud?

5 A. That's what I understand, yes.

6 Q. Should students be made aware of the fact  
7 that these drawings were a fraud?

8 A. That would be a judgment call on the  
9 individual instructors or school district or whatever.  
10 It depends on if they have been brought up, it depends  
11 on if students brought them up, if they're used in  
12 textbooks. There are too many factors to consider  
13 there. I can't make a blanket statement on that.

14 Q. Well, if students believe that those embryos  
15 were true, that would be a misconception, would it  
16 not?

17 A. From my understanding of this, yes. I'm not  
18 an expert in science, and I'm not an expert on the  
19 Haeckel embryo history.

20 Q. Sir, I want to explore a little bit your  
21 understanding of intelligent design as it relates to  
22 the opinions that you've offered in this case. Does  
23 intelligent design, from your perspective, require  
24 adherence to the claim that the earth is no older than  
25 6,000 to 10,000 years?

1 A. Not necessarily.

2 Q. Does intelligent design require adherence to  
3 the six-day creation event, that is, a literal reading  
4 of the account in the Book of Genesis?

5 A. Not my understanding, no.

6 Q. Does intelligent design require adherence to  
7 the flood geology point of view advanced by  
8 creationists?

9 A. No.

10 Q. Is it your understanding that intelligent  
11 design requires the action of a supernatural creator?

12 A. Yes.

13 Q. Is it your understanding that intelligent  
14 design rules out all natural explanations for design?

15 A. In my view, yes.

16 Q. Sir, intelligent design does not depend on  
17 any religious faith. Correct?

18 A. Correct.

19 Q. Intelligent design is not dependent on the  
20 Bible to reach its conclusions. Correct?

21 A. Correct.

22 Q. Intelligent design is not dependent on  
23 sacred Scripture to reach its conclusions. Correct?

24 A. Correct.

25 Q. Intelligent design does not say who the

1 designer was. Correct?

2 A. Correct.

3 Q. Is it your understanding that intelligent  
4 design disputes the occurrence of evolution as we just  
5 explored the definition of that term?

6 A. It certainly does in *Pandas and People*, Page  
7 99 to 100.

8 Q. So it's your understanding of intelligent  
9 design that it disputes the claim that life has  
10 changed over time?

11 A. You've taken the definition from the  
12 occurrence of evolution to change over time. I'm  
13 going to direct it right back to the occurrence of  
14 evolution. The Dover policy states that there's an  
15 alternative to the occurrence of evolution, Darwin's  
16 theory of evolution, and it's called intelligent  
17 design. So intelligent design is considered to be  
18 something alternative to the occurrence of evolution.

19 Q. Well, let me ask you again then, how do you  
20 define "occurrence of evolution"?

21 A. That evolution has occurred.

22 Q. And what do you mean by "evolution"?

23 A. Descent with modification.

24 Q. Is that not the mechanism of evolution?

25 A. No, that the earth is very old and that

1 ancestry exists among all organisms on the planet,  
2 descent with modification.

3 Q. You distinguish that from natural selection,  
4 though. Correct?

5 A. Natural selection is one of the possible  
6 mechanisms for evolution, yes.

7 Q. Was not natural selection Darwin's principal  
8 contribution to the theory of evolution?

9 A. Yes.

10 Q. So the fact that life has changed over time,  
11 meaning life as we see it today was not the same as  
12 life was in earlier stages of the earth's history,  
13 that understanding was known before actually Darwin  
14 offered the mechanism of natural selection. Is that  
15 true?

16 A. Correct.

17 Q. And so, again, when you're talking about the  
18 occurrence of evolution, you're not talking about  
19 natural selection, you're talking about this notion  
20 that life is not the same today as it was previously?

21 A. Correct.

22 Q. And it's your understanding that intelligent  
23 design refutes that aspect of evolution, the  
24 occurrence of evolution as you're claiming?

25 A. It conflicts with the -- yes, the scientific

1 explanation of the change in life on the planet, as  
2 opposed to intelligent design that states that some  
3 supernatural cause came in and changed life on the  
4 planet.

5 Q. And, again, sir, I'm asking, though, is it  
6 your understanding that intelligent design refutes  
7 that life has changed over time on the planet?

8 A. Evolution -- the occurrence of evolution and  
9 how it preceded is -- could you repeat your question?

10 Q. We keep dancing around the occurrence of  
11 evolution, and I'm trying to just ask you if it's your  
12 opinion or your opinions are based on the  
13 understanding that intelligent design refutes the  
14 notion that life has changed over time, meaning life  
15 as it is today is different than --

16 A. Well, it's a tough question to answer  
17 because intelligent design posits that some life was  
18 inserted into along the history of life on the planet.  
19 Evolution has the history of life along the planet  
20 scientifically explained. Intelligent design inserts,  
21 by supernatural causation, life along the way. So  
22 that's why it's tough to answer that question, for me,  
23 at least.

24 Q. Well, you used the term "history of life."  
25 Is it your understanding that intelligent design

1 refutes the notion that there's a history of life on  
2 this planet?

3 A. Well, when I read Page 99-100, for example,  
4 in *Pandas*, yes, it has a fish appearing with fins  
5 fully and birds with feathers and so forth, abrupt  
6 appearance. It's quite different than the history of  
7 evolution.

8 Q. Sir, is intelligent design falsifiable?

9 A. I have no idea. I'm not a philosopher of  
10 science. It's outside of my area of expertise.

11 Q. Do you know if any biology teachers in  
12 secular colleges are providing students with  
13 supplemental materials that discuss intelligent  
14 design?

15 A. I know of none.

16 Q. Do you know if any biology teachers in  
17 secular colleges are discussing intelligent design in  
18 their classes?

19 A. I've heard of some that have discussed it to  
20 point out that it's not science, to use it as a foil  
21 for the scientific method, scientific processes.

22 Q. Do you consider Brown University a  
23 prestigious university?

24 A. Yes.

25 Q. Do you remember Cornell University a

1 prestigious university?

2 A. Yes.

3 Q. Sir, you testified today, and I believe it's  
4 consistent with your deposition, that you believe one  
5 of the fundamental reasons that *Pandas* is not a  
6 science book is because of the ground rule, as you  
7 described it, of methodological naturalism?

8 A. Yes.

9 Q. Now, you described it as a ground rule. Is  
10 this a rule written somewhere in a science rule book?

11 A. No. But when it's broken, you hear a lot  
12 about it.

13 Q. Do you know if philosophers of science  
14 actually debate whether or not methodological  
15 naturalism is an appropriate way or appropriate gloss  
16 to apply on science?

17 A. Again, to repeat, I'm not a philosopher of  
18 science, and I understand philosophers argue about  
19 everything.

20 Q. Now, you said you reviewed the book *Pandas*  
21 *and People*, and, in fact, you put up a few select  
22 quotes up on the display here in court. Correct?

23 A. No, no, that's not what I said. I probably  
24 received the book about ten years ago. I looked at it  
25 then. I haven't looked at it since until this trial



1 came up. I pulled it off the shelf. I had a page  
2 marked, 99 to 100, with a Post-It note, I assume ten  
3 years ago. I read the note to the teachers recently  
4 as preparation for this and may have looked at the  
5 glossary.

6 Q. That's all you looked at in preparation for  
7 your opinions today?

8 A. Yes.

9 Q. So you didn't look at the section that  
10 discusses the blood clotting system, for example?

11 A. No, I didn't.

12 Q. So you have no way of knowing whether that's  
13 an accurate scientific account?

14 A. No.

15 Q. And you also didn't look at the section  
16 dealing with the molecular clock problem?

17 A. I didn't look at any other section in the  
18 book other than Page 99 and 100 concerning the abrupt  
19 appearance and the supernatural causation right in the  
20 middle of it. That was enough of the book for me.

21 Q. So, again, you wouldn't have any reason to  
22 refute the scientific validity of the molecular clock  
23 claim made in the *Pandas* book. Correct?

24 A. I haven't read it, so, yes, I can't comment  
25 on that.

1           Q.    Now, you referenced several statements that  
2 were made by various organizations, one by the  
3 National Academy of Sciences, another by the AAAS, a  
4 board resolution, a resolution by the NSTA, a  
5 resolution by the NABT, and a resolution by the AAUP,  
6 which were addressing the teaching of evolution, as  
7 well as intelligent design. Do you recall those  
8 various resolutions that you went through?

9           A.    I don't have them memorized, but I recall  
10 going through those, yes.

11          Q.    Now, is it accurate to say that those  
12 resolutions are policy statements?

13          A.    I don't know.

14          Q.    Well, do you know if any of those statements  
15 provide any experimental evidence to refute  
16 intelligent design?

17          A.    I don't know.

18          Q.    Have you read the entire statements or just  
19 those select portions that you displayed and testified  
20 to today?

21          A.    Some of the statements I read completely.  
22 Possibly other ones just sections. I don't recall.

23          Q.    So you don't recall the ones you read  
24 whether they cite any experimental evidence?

25          A.    I don't recall any.

1 Q. Now, a focus of your research from your  
2 testimony, I gather, is on this perceived conflict  
3 between religion and evolution. Is that correct?

4 A. Yes, the problems that students perceive  
5 that they have in learning evolution concerning  
6 primarily their religious faith.

7 Q. And I take it from your testimony that there  
8 isn't a conflict between evolution and religious  
9 beliefs. Is that correct?

10 A. No, what I said, the majority of religions  
11 that I'm familiar with have accommodations for  
12 evolution or don't seem to have much problems. Some  
13 sections of some religions certainly do have a direct  
14 conflict.

15 Q. Would it be a misconception for a student to  
16 enter a science class with the understanding that  
17 science has disproven the existence of God?

18 A. That would be a misconception about nature  
19 of science.

20 Q. And for scientists to say otherwise would  
21 engender a misconception?

22 A. I don't know if it would necessarily  
23 engender a misconception, but it is a misconception.

24 Q. Would it create a misconception for students  
25 to conflate the strength of scientific evidence for

1 the occurrence of evolution with the scientific  
2 evidence for the mechanism of evolution, specifically  
3 natural selection?

4 A. They're two different things. One is the  
5 occurrence and one is the mechanisms.

6 Q. And would it be a misconception for a  
7 student to conflate the evidence between the two?

8 A. I don't think there's an exact wall between  
9 the two of them. I don't --

10 Q. Let me ask you this then, sir. Is there a  
11 difference in terms of the consensus within the  
12 scientific community regarding the evidentiary support  
13 for the occurrence of evolution compared with the  
14 evidentiary support for the mechanism of evolution,  
15 natural selection?

16 A. Yes.

17 Q. Would it be a misconception for the students  
18 to conflate those two?

19 A. Yes. There are technical aspects involved  
20 in that that might be able to be parsed out with  
21 15-year-olds. Part of it is extraordinarily  
22 complicated and far above my level.

23 Q. So, for example, if a student believed that  
24 there was overwhelming scientific consensus for  
25 natural selection, that would be a misconception?

1           A.    Yes.  That's natural selection being the  
2           only mechanism for evolution.  I assume that's what  
3           you meant by the question.

4           Q.    That wasn't the point of my question.  The  
5           point of my question was, you testified that the  
6           evidence, the scientific consensus for the occurrence  
7           of evolution -- I believe one of the terms you used  
8           was "overwhelming" or something along those lines.

9           A.    Sounds good.

10          Q.    Would you also agree that the scientific  
11          consensus for the evidence for natural selection is  
12          not overwhelming?

13          A.    The question is poorly put.  The debates, as  
14          I understand them in the scientific community, are  
15          over what's the play of natural selection versus some  
16          of the other mechanisms, founder effect, genetic  
17          drift, you know, all these, what role do they play and  
18          what percentages and so forth and complex issues  
19          concerning them.  So it's not just confidence level in  
20          natural selection, it's confidence level in what role  
21          does natural selection play in the mechanisms of  
22          evolution.

23                    Is it -- this is not how the scientists  
24          would put it, but is it the major, is it more minor,  
25          is it more in the middle involved, that sort of a

1 question, not just do they have a high confidence  
2 level in natural selection.

3 Q. But the debate over the mechanism of  
4 evolution is not the same as scientists debating the  
5 occurrence of evolution?

6 A. Scientists don't debate the occurrence of  
7 evolution. That was put to bed long ago. They're  
8 debating the mechanisms and what interplay the various  
9 mechanisms have.

10 Q. So if a student believes that the consensus  
11 for the mechanism of evolution was the same as the  
12 consensus for the occurrence of evolution, that would  
13 be a misconception?

14 A. Yes.

15 Q. Sir, you're a member of the National Center  
16 for Science Education?

17 A. Yes.

18 Q. I believe you're a member of the board?

19 A. Yes. Just recently I was appointed, I  
20 believe in February.

21 Q. I want to ask you a few more questions about  
22 methodological naturalism. Is it accurate to say that  
23 methodological naturalism is a convention that's  
24 imposed upon scientific inquiry?

25 A. Imposed? What do you mean by "imposed"?

1           Q.    It's one that places limitations on  
2 scientific inquiry.

3           A.    This is how scientists do their work, as I  
4 understand it.  When I pick up a science journal and  
5 look into it, I don't find supernatural causation in  
6 the scientific articles.  I don't find it in the  
7 college textbooks.  I don't find it in the high school  
8 textbooks.  The most prestigious scientific  
9 organization, NAS, says no, AAAS says no, and NSTA,  
10 NABT say no.  So I have a very high confidence level  
11 on this issue concerning that supernatural causation  
12 is not part of the ground rules of science and that  
13 methodological naturalism is.

14          Q.    And so, for example, it would impose a  
15 restriction on relying on a supernatural explanation  
16 for a particular question?

17          A.    I don't know about the word "restriction."  
18 I don't know if anywhere it's posted, Scientists,  
19 please do not use supernatural causes in your work.  I  
20 don't know if that exists anywhere.  The word  
21 "imposed" is -- I'm still having troubles  
22 understanding.

23                I think scientists watch how science is  
24 done.  They're trained in their universities, and then  
25 they go out, they probably postdoc under somebody, and

1 then they carry on their scientific work. And in  
2 their journals and in their conferences it's all about  
3 methodological naturalism, it's all about not  
4 inserting supernatural causation into it.

5 I don't know any federal funding source that  
6 funds -- or state funding sources that fund scientists  
7 to do work in supernatural causes in science. So from  
8 that extent, maybe there's some sort of implicit  
9 imposition of that rule. But other than that, you  
10 know, I don't think there's science police, if you  
11 will.

12 Q. Are you aware that NASA is doing a -- is  
13 involved in a program for the search for  
14 extraterrestrial intelligence?

15 A. SETI?

16 Q. Yes.

17 A. Yes.

18 Q. Does that fall within the restrictions of  
19 methodological naturalism, that scientific inquiry?

20 A. My understanding is it's very much  
21 scientific, and the American Association -- no, the  
22 American Astronomical Society came out, I think it was  
23 in August, I think it was in August, with a resolution  
24 condemning intelligent design and saying that  
25 supernatural causation should not be a part of



1 science.

2 I don't understand the SETI project. I  
3 haven't followed it whatsoever. Just what I've read  
4 in the paper a little bit. But I trust that their  
5 society, the American Astronomical Society,  
6 understands that very well.

7 Q. Based on your understanding of SETI, is it  
8 accurate to say that ruling out intelligent -- the  
9 search for intelligent causes doesn't necessarily  
10 violate methodological naturalism?

11 MR. WALCZAK: Your Honor, objection. I just  
12 heard the witness say he really doesn't know much  
13 about the SETI at all.

14 MR. MUISE: And my question, Your Honor, was  
15 based on what his understanding was. He obviously has  
16 some understanding of it. He testified --

17 THE COURT: Well, his answer was that he  
18 knew of it, had heard of it. But I think it was quite  
19 clear to me, at least, that he didn't know anything  
20 more than the fact that it existed. I'll overrule the  
21 objection to that question, but I'm not going to let  
22 you press because I don't think he --

23 MR. MUISE: I'll move on, Your Honor.

24 THE COURT: It's pretty clear that he  
25 doesn't know.

1 MR. WALCZAK: Your Honor, we're also beyond  
2 the scope of his direct exam. We're beyond the scope  
3 of his expert report.

4 THE COURT: That's arguably true. I'll give  
5 you latitude on this question, but we ought not go too  
6 far into this area. It's right on the borderline, I  
7 think, and I want to give you some latitude. Do you  
8 remember the question, sir? Probably not.

9 THE WITNESS: I'm sorry.

10 THE COURT: After all that dialogue.

11 THE WITNESS: I'm sorry.

12 THE COURT: Could we read it back, please.

13 (Previous question read back.)

14 THE WITNESS: My understanding of what SETI  
15 is doing is looking for radio waves from possible  
16 extraterrestrials and radio waves that we can  
17 manufacture and understand extraordinarily well all  
18 the time. I think that's quite different than  
19 intelligent design where it's some supernatural cause  
20 that we don't understand whatsoever.

21 BY MR. MUISE:

22 Q. Sir, are you aware of a theory that was  
23 advanced called directed panspermia?

24 A. I heard of it in years past. Wasn't it  
25 Francis Crick came up with that?

1           Q.    Do you know if the hypothesis was that life  
2 was scattered here either intentionally or  
3 unintentionally by other planets?

4           MR. WALCZAK:  Your Honor, I'm going to  
5 object.  We're outside not only the scope of his  
6 expert report and his testimony, but outside his  
7 expertise.  Professor Alters has testified that he is  
8 not a scientist, he's a science educator, and all  
9 these questions are going to science.

10          MR. MUISE:  Your Honor, he said the  
11 fundamental reason why he believes that *Pandas* is not  
12 a science book is because it violates the ground rule  
13 of methodological naturalism.  Methodological  
14 naturalism is very much at the core of his testimony,  
15 and I am exploring what his understanding of  
16 methodological naturalism is and how it might or might  
17 not apply in other areas which I think are very  
18 relevant to the case.

19          THE COURT:  Why don't you rephrase and make  
20 that clear, because I don't think that was clear from  
21 that question.  So I'll sustain the objection to the  
22 form of the question.  I think that's a fair area of  
23 inquiry, I agree with you, and I'll let you rephrase.

24          BY MR. MUISE:

25          Q.    Sir, based on your understanding of this

1 hypothesis of directed panspermia, does it violate  
2 this ground rule of methodological naturalism that  
3 you've been referring to?

4 A. I don't know. I recall so little of that.  
5 It's a distant memory so many decades ago, I can't  
6 recall.

7 Q. Are you familiar with the big bang theory?

8 A. Yes, heard about it.

9 Q. Your understanding of the big bang theory,  
10 does that violate the ground rule of methodological  
11 naturalism?

12 A. I would assume not. The national academies  
13 talk about the big bang, and they talk about how  
14 supernatural causation should not be in science, so  
15 hopefully the right hand knows what the left hand is  
16 doing in all these national academies, national  
17 education academies. And in reading small things here  
18 and there about the physics of the big bang, I've  
19 never seen supernatural causation in anything I've  
20 read concerning it.

21 Q. Sir, do you know who Nobel laureate Steven  
22 Weinberg is?

23 A. Yes.

24 Q. And he explained that his career in science  
25 was motivated by a desire to disprove religion. And I

1 want to read you a quote that he made. Quote, I  
2 personally feel that the teaching of modern science is  
3 corrosive of religious belief and I'm all for that,  
4 exclamation point. One of the things that, in fact,  
5 has driven me in my life is the feeling that this is  
6 one of the great social functions of science, to free  
7 people from superstition, end quote. Do you agree  
8 with that statement?

9 A. I think it's a very unfortunate statement.  
10 No.

11 Q. And I take it then you would agree that he  
12 is not promoting good science pedagogy?

13 A. Many scientists don't know much about  
14 education. They might be great scientists in their  
15 specific field, but they're not necessarily great  
16 educators.

17 Q. Is it accurate to say that you should not  
18 conflate a scientific theory with a nonscientific  
19 idea?

20 A. Could you repeat it?

21 Q. Is it accurate to say that you shouldn't  
22 conflate a scientific theory with a nonscientific  
23 idea?

24 A. A scientific theory is an explanation. What  
25 you said was a scientific explanation with a --

1 Q. Nonscientific idea.

2 A. With a nonscientific idea. Yes, I think  
3 that would be bad.

4 Q. Sir, scientists have made nonscientific  
5 claims about the theory of evolution. Correct?

6 A. Scientists make -- they're humans. They  
7 make claims about a lot of things, yes.

8 Q. Do you know who Richard Dawkins was?

9 A. Is.

10 Q. Is.

11 A. He's still alive.

12 Q. Yes.

13 A. Yes, I know who he is.

14 Q. Are you aware he made this comment, quote,  
15 Darwin made it possible to become an intellectually  
16 fulfilled atheist, unquote?

17 A. Yes. It's an unfortunate statement.

18 Q. And that was in the *Blind Watchmaker*?

19 A. Is that where it's from? I don't know where  
20 the -- I read the *Blind Watchmaker*. If that's where  
21 it's from, I believe you.

22 Q. That's a nonscientific claim. Correct?

23 A. Yes.

24 Q. Are you aware of anyone -- of any scientists  
25 claiming that trajectory allowed them to become a

1 intellectually fulfilled atheist?

2 A. No.

3 Q. You've testified on direct that you knew  
4 fairly well the late Stephen J. Gould?

5 A. I don't know if I would say I knew him  
6 fairly well, but I did know him.

7 Q. He was a colleague of yours?

8 A. Well, he was a fellow university professor.

9 Q. And I believe he endorsed one of your books?

10 A. Yes.

11 Q. Now, in a book called *Ever Since Darwin*,  
12 Dr. Gould stated, quote, Before Darwin, we thought  
13 that a benevolent God had created us, unquote. Are  
14 you aware that he made that statement?

15 A. No, I'm not aware that he made that  
16 statement, but subsequent to that book, he wrote a  
17 book on science and religion and said one doesn't  
18 answer the other's questions and they should live in  
19 mutual respect, that science doesn't take away  
20 anything from religion.

21 Q. With regard to the quote that I read to you,  
22 sir, "Before Darwin, we thought that a benevolent God  
23 had created us," that would be a nonscientific claim.  
24 Correct?

25 A. It sounds like a history of science claim to

1 me, which, again, is outside of my expertise.

2 Q. Have you ever heard a scientist make such a  
3 claim about the wave theory of light, for example?

4 A. What's the statement again?

5 Q. "Before Darwin, we thought that a benevolent  
6 God had created us."

7 A. Not about a wave theory. Many other areas  
8 of science, though. Only God could make a tree.

9 Q. Well, by making that statement, wouldn't  
10 Dr. Gould be contributing to the misconceptions that  
11 you've been trying to rid, it appears, in your career?

12 A. Occasionally scientists contribute to  
13 students' misconceptions, yes.

14 Q. And this was the scientist that endorsed  
15 your particular book?

16 A. Oh, I'm not saying that that statement is  
17 necessarily a misconception. I'm just stating that if  
18 it is a misconception, that scientists commonly make  
19 misconceptions and conflate nonscience with science  
20 when they're speaking or writing in books.

21 Q. Do you know who the late George Gaylord  
22 Simpson was?

23 A. Yes.

24 Q. An evolutionary biologist?

25 A. Yes. Did a lot of work on tempo and mode of



1 evolution.

2 Q. He wrote a book called, *The Meaning of*  
3 *Evolution*, and in this book, he said this quote: Man  
4 is the result of a purposeless and materialistic  
5 process that did not have him in mind. He was not  
6 planned, end quote. Is that a scientific claim?

7 A. Could you read it one more time, please?

8 Q. Man is the result of a purposeless and  
9 materialistic process that did not have him in mind.  
10 He was not planned.

11 A. To me that's not a scientific statement.

12 Q. Did you ever hear a scientist make such a  
13 claim in the context of discussing trajectory?

14 A. No.

15 Q. Is it your testimony that intelligent design  
16 is being taught to the students because the statement  
17 is being read to them?

18 A. During the mini lecture that they receive,  
19 yes, it's being taught in the Dover curriculum, and  
20 it's even -- the word "lecture" is even there.

21 Q. If the statement was handed out to the  
22 students for them to read on their own, would it still  
23 satisfy the teaching definition that you've used?

24 A. Sure. The authors who wrote it are teaching  
25 the students that.

1           Q.    I believe you testified that prior to  
2 hearing this statement, it's your opinion that  
3 students would probably have no idea what the word  
4 "intelligent design" means?

5           A.    No, I think what I said was that most  
6 students probably wouldn't. I have no idea that --  
7 there could be five or ten students who learned it in  
8 church, came into the classroom and then hear  
9 intelligent design again in the science classroom.

10          Q.    Do you have any reason to believe that the  
11 concepts of intelligent design are being taught in the  
12 classroom?

13          A.    Well, yes, there certainly was, the concept  
14 that it's an alternate scientific theory. And  
15 intelligent design's claim is that somehow evolution  
16 is insufficient, has gaps and problems, and, ergo,  
17 that supernatural causation has to come in and be  
18 inserted in that point is implicit in that four  
19 paragraphs. There are gaps and weaknesses or gaps and  
20 problems with evolution theory and that the alternate  
21 theory comes along and that's intelligent design.

22                   The bashing happens with evolution. It's in  
23 that four paragraphs. It's evolution that's only a  
24 theory, it's evolution that has the gaps and problems.  
25 And then you go down to intelligent design, it doesn't

1 mention any of intelligent design's gaps or problems  
2 or that it's just a theory.

3 So, yes, I think they're learning a lot from  
4 that mini lecture, or potentially could learn a lot  
5 from that mini lecture.

6 Q. They also learn that because Darwin's theory  
7 is a theory, it is a well-tested explanation that  
8 unifies a broad range of observations. Correct?

9 A. I think that's the best sentence out of the  
10 four paragraphs, as I stated previously.

11 Q. Sir, a science classroom in a public school  
12 is a forum for inquiry. Correct?

13 A. Sure.

14 Q. I'm sorry?

15 A. Sure.

16 Q. That would be a yes?

17 A. I'm sorry, yes.

18 Q. Now, you testified on direct about the -- I  
19 believe you described it as a special opt-out policy.

20 A. I don't remember using those words, but I  
21 remember we talked about the students can opt out from  
22 hearing the statement.

23 Q. Is it your understanding that the Dover  
24 School District has a very broad opt-out policy that  
25 would allow a student to opt out of the entire section

1 on evolution if they wanted to?

2 A. Well, that's unfortunate, but I was not  
3 aware of that, no.

4 Q. Was it your understanding that they only had  
5 a special opt-out that dealt just with this one-minute  
6 statement?

7 A. I hadn't given it any thought.

8 Q. Would you agree that there's a genuine  
9 scientific debate regarding the mechanisms of  
10 evolution?

11 A. That's what the scientific community  
12 reports.

13 MR. MUISE: No further questions, Your  
14 Honor.

15 THE COURT: All right. Thank you,  
16 Mr. Muise. Redirect, Mr. Walczak.

17 MR. WALCZAK: Just a couple of areas.

18 REDIRECT EXAMINATION

19 BY MR. WALCZAK:

20 Q. Dr. Alters, Mr. Muise asked you a few  
21 questions, and you seemed tentative in your answers.

22 For instance, he asked you about the origin of --

23 A. I'm having trouble hearing you. Sorry.

24 Q. I'm sorry. Mr. Muise asked you some  
25 questions, and you seemed tentative in your answers.

1 For instance, he asked you about the origin of life,  
2 and you seemed uncertain about that answer.

3 A. Well, there's definitely a scientific  
4 explanation and various scientific explanations  
5 concerning the origin of life.

6 Q. He also asked you about some of the science  
7 contained in *Pandas*. Do you recall that?

8 A. Yes.

9 Q. You're not a scientist?

10 A. No.

11 Q. And you don't claim to be a scientist?

12 A. No.

13 Q. Your expertise is in science education?

14 A. Correct.

15 Q. And so whether it's good or bad science, you  
16 take your cue from the scientific community?

17 A. Absolutely. I would hope all science  
18 educators do.

19 Q. So you don't make these independent  
20 determinations on whether it's good or bad science,  
21 that's done by the scientific community?

22 A. Correct.

23 Q. And science educators simply want to report  
24 accurately what the scientific community is discussing  
25 at the time?

1 A. Correct.

2 Q. And the positions taken by the scientific  
3 community?

4 A. Correct.

5 Q. Matt, could you put up Plaintiffs'  
6 Exhibit -- I believe it's 131. Mr. Muise asked you  
7 about a change to the four-paragraph statement, and  
8 you weren't quite sure what the changes were.

9 A. Correct.

10 Q. So the statement I showed you on direct exam  
11 was the one read to students in January.

12 A. Okay.

13 Q. What we've put up here, Plaintiffs' Exhibit  
14 131, is the statement that was read to students, I  
15 believe it was in June whenever students were being  
16 taught evolution in the second semester. Could you,  
17 Matt, highlight the four-paragraph statement.

18 Now, Dr. Alters, let me just represent to  
19 you that as best I understand it, the only change made  
20 from the January to the June statement is in the third  
21 paragraph. And I don't know, Matt, are you in a  
22 position to pull up that paragraph from January?

23 So I believe the top statement highlighted  
24 is from Exhibit 124, the January statement. That same  
25 paragraph highlighted below is from the June

1 statement. Do you see the changes made between those  
2 two statements, Dr. Alters?

3 A. Yes. Apparently what's been inserted is "in  
4 the library along with other resources," yes.

5 Q. Does this change to the statement in any way  
6 alter your opinion that this is poor pedagogy and  
7 misleads students about science?

8 A. I think it makes it worse.

9 Q. Why is that?

10 A. Well, now the sentence reads, The reference  
11 book *Of Pandas and People* is available in the library,  
12 along with other resources for students who might be  
13 interested in gaining an understanding of what  
14 intelligent design actually involves.

15 It sounds like now there's even more books  
16 for this nonscience that was read in the science  
17 classroom to go check out, apparently to improve their  
18 understanding of science, even though they're not  
19 science. It makes it worse.

20 If I read that and I think if a 15-year-old  
21 heard that -- it's right in between -- the previous  
22 sentence is talking about intelligent design. The  
23 following sentence is talking about intelligent  
24 design. And what's squeezed in between is, The  
25 reference book *Of Pandas and People* is available in

1 the library along with other resources for students  
2 who might be interested, blah, blah, blah.

3 So I think it made it worse. I think it  
4 makes it sound like there are lots of resources the  
5 students should go seek out concerning intelligent  
6 design.

7 Q. So regardless of what books may actually be  
8 in the library, they don't identify anywhere in the  
9 statement what those books are?

10 A. No.

11 Q. And you're saying that the reasonable  
12 interpretation of this is that, oh, there are lots of  
13 books now to support intelligent design?

14 A. That's how it reads to me.

15 Q. I want to clarify one last -- what seemed to  
16 be a little point of confusion. Mr. Muise was asking  
17 you about consensus in the scientific community about  
18 the occurrence of evolution and the theory of  
19 evolution, and I think one of the things that  
20 Mr. Muise was trying to get you to say is that there  
21 is not overwhelming support in the scientific  
22 community for the mechanism of natural selection.

23 Do you believe that there is overwhelming  
24 support in the scientific community that natural  
25 selection is one of the mechanisms of change?



1           A.    Yes, there is.  The discussions, as I  
2 understand them in the scientific community, are among  
3 natural selection's relative role compared to other  
4 mechanisms of evolution.

5           Q.    And natural selection was really the  
6 innovation, if that's the right word, that Darwin  
7 brought to the science?

8           A.    Yes.  Darwin used the word "theory"  
9 correctly.  It's an explanation.  So it's evolution,  
10 and what's the theory, what's the explanation?  
11 Natural selection is what he posited.

12          Q.    And is it your understanding that science,  
13 in the 150 years since Darwin, has built upon his  
14 findings and has really confirmed that natural  
15 selection is one of the evolutionary processes?

16          A.    That's what I understand the scientists  
17 reporting to me, yes.

18               MR. WALCZAK:  I have no further questions.

19               MR. MUISE:  Recross, Your Honor?

20               THE COURT:  Recross.

21                               RECCROSS-EXAMINATION

22               BY MR. MUISE:

23               Q.    Dr. Alters, the other resources --

24               A.    Yes.

25               Q.    -- that are referenced in the second version

1 of the statement, do you see that, sir?

2 A. Yes.

3 Q. If I represent to you that some of these  
4 other resources are actually books written by experts  
5 who have testified in this case on behalf of  
6 plaintiffs, would that change your opinion?

7 A. Change my opinion of what?

8 Q. Well, you offered an opinion, you thought  
9 that this actually made this statement more  
10 detrimental.

11 A. Yes, but what you just told me isn't being  
12 read to the students.

13 Q. So it makes no difference to you then what  
14 the resources are in the library that the students are  
15 directed to?

16 A. Okay, now I have two problems with the  
17 sentence. The first problem is what I just stated,  
18 that now the students think there are more resources.  
19 Now I have another problem with it that apparently  
20 you're going to have resources arguing that the other  
21 resource, *Pandas and People*, is not science.

22 So now we've said there's this alternate  
23 scientific theory, and now you're sending them, I  
24 guess, to the -- yes, to the library to reference  
25 books that will say it's not science, even though an

1 administrator at the school has said it's science by  
2 reading and giving this mini lecture to them.

3 Now I'm even more confused. I'm confused as  
4 an educator, and I think the teachers will be  
5 confused, and I think the students will be confused.  
6 So, yes, it's worse.

7 MR. MUISE: No further questions.

8 THE COURT: All right. This will be an  
9 appropriate time for us to break after we take the  
10 exhibits. Let's do the exhibits before we adjourn.  
11 Plaintiffs' 182 is -- Dr. Alters, you may step down.  
12 Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: We have Dr. Alters' CV. P212 is  
15 the Defending Evolution text. P192 and P198 are  
16 already in. P183 is the NSTA statement on teaching  
17 evolution. P186 is the NSTA position statement on  
18 teaching evolution. P700 is teaching evolution. P210  
19 is already in. So we have P182, P212, P183, P186, and  
20 P700. And, Mr. Walczak, your pleasure with respect to  
21 those?

22 MR. WALCZAK: We would move all of those  
23 exhibits.

24 THE COURT: Mr. Muise?

25 MR. MUISE: No objections, Your Honor.

1 THE COURT: All right. Then all those are  
2 admitted. On redirect we have P131, which is the  
3 revised statement. That may be in. I'm not sure. I  
4 don't show it as in, though. Mr. Walczak, do you want  
5 to move P131 in? I don't show it as being in, but it  
6 may be. That is the revised statement that you just  
7 referred to that you put up.

8 MR. WALCZAK: If it's not in, this seems  
9 like an opportune time to move it in.

10 MR. GILLEN: It should be in, Your Honor.

11 THE COURT: I'm thinking it is, but we  
12 didn't show it as --

13 MR. WALCZAK: I'm being told it was moved in  
14 on September 27th.

15 THE COURT: That memory is better than mine,  
16 and I'll accept it. So we'll note that it's in, and  
17 if it's not in, it will go in with this witness, we'll  
18 stand corrected. I don't have any other exhibits, and  
19 I don't have any exhibits on cross. Mr. Muise, any  
20 exhibits that I'm not aware of?

21 MR. MUISE: Your Honor, the only thing we  
22 referenced was the *Biology* book.

23 THE COURT: Which is already in, I think.  
24 Well, I don't know if it's in, but it was referred to.  
25 You don't want to move that in, do you?

1 MR. MUISE: Not at this time.

2 MR. WALCZAK: Your Honor, we'd just clarify  
3 that 212, we'd move the entire book into evidence.

4 THE COURT: That was the sense of what I  
5 thought you were doing. You don't object to that, do  
6 you?

7 MR. MUISE: No, Your Honor.

8 THE COURT: The entire book is in because I  
9 don't have an excerpt noted. All right. Anything  
10 further before we recess from counsel?

11 MR. GILLEN: No, Your Honor.

12 MR. ROTHSCHILD: One more thing I wanted to  
13 raise, Your Honor, if this is a good time. We had  
14 requested last week that Dr. Forrest's two reports and  
15 what I'll call the extra exhibits that she didn't  
16 testify about be moved into evidence for the purposes  
17 of the record on the motion in limine, both  
18 qualifications and methodology.

19 MR. GILLEN: Your Honor, we've given it a  
20 lot of thought, and I think for the record we're going  
21 to object, for the simple reason that the whole scope  
22 of that material -- as you know, we tried to work out  
23 the presentation of the witness through the plaintiffs  
24 and then voir dire. Essentially it seems like it  
25 creates the risk, from our standpoint, of vastly

1 expanding the amount of material that can be relied on  
2 for her expertise and qualifications, whereas the  
3 questioning didn't reach all of those and in some  
4 points would have.

5 THE COURT: Well, let me ask you this. If  
6 you have an appellate issue with respect to her  
7 testimony as an expert, how are you going to argue it  
8 if you don't have the report in?

9 MR. GILLEN: Well, it would seem like the  
10 proffer is the typical way in which it's done. This  
11 is rather unusual to try and get in the reports, which  
12 are generally hearsay, to buttress that. And that's  
13 my concern at this point, which is, there's a whole  
14 bunch of additional material that's going to be added  
15 to support the proffer that was not --

16 THE COURT: Well, as I said last week, I  
17 assure you that if I would admit it, I'm not admitting  
18 it for my consideration. I'll take her testimony on  
19 the record as I allowed it over some objections.

20 I think, Mr. Rothschild, that it is more  
21 helpful to the defense, conceivably, under most  
22 circumstances I can think of, to have the whole report  
23 in. But if it's only for appellate review and in the  
24 event of a determination it's adverse to the defense,  
25 in that situation I can't see where it necessarily

1 helps the plaintiffs in an event that there's a  
2 determination adverse to the plaintiffs because she  
3 testified. And I don't think that's going to be  
4 necessarily an issue in that event.

5           You might want to give that some more  
6 thought. And as I said, I will accept a stipulation,  
7 if you want to craft a stipulation to protect  
8 yourself. To be fair, you might not have had enough  
9 time to think about a stipulation. If you want to --  
10 and I'll accept if you don't want to enter a  
11 stipulation and you want to object to it. That's  
12 fine, and I'll make a ruling. But give it a little  
13 bit more thought, because with a stipulation that it  
14 is not for the Court's consideration at this level,  
15 you know, you might want it in there.

16           Your appellate record is what it is. I  
17 understand you say you're limited to the proffer, but  
18 your argument went beyond the proffer. Your argument  
19 went to what's in her record or what's in -- not  
20 what's in the record, what's in her report, excuse me.  
21 You might give that some thought.

22           MR. ROTHSCHILD: Your Honor, I mean, it  
23 seems like the way they have characterized their  
24 argument is, look, she's just picking out a few quotes  
25 that are supportive of her viewpoint, and what we want

1 to show is her methodology which is reflected in the  
2 book, which is already in evidence, and the report,  
3 which encompasses quite a bit of information --

4 THE COURT: Well, but that could be  
5 problematic, too. That may go too far. I think, to  
6 respond to what Mr. Gillen is saying, the one thing  
7 that you're going to have to be careful about is, you  
8 know, your lips are sealed and you've estopped any  
9 argument that you're going to make based upon what's  
10 in that report if you don't let it in the record. You  
11 are, indeed, restricted to the proffer. Now, maybe  
12 you've thought about that and that's what you want to  
13 do.

14 MR. GILLEN: No, actually, Your Honor, the  
15 way you've put it to me today, it does warrant further  
16 consideration. Let me see if I grasp your mind on  
17 this. What you're saying is, for the purpose of your  
18 decision to admit her, your understanding is that that  
19 decision is based on the proffer and the voir dire and  
20 cross. Am I correct?

21 THE COURT: Yes, and not the report itself.  
22 The report was considered by me for the purpose of  
23 ruling on the motion in limine. Once we got beyond  
24 that --

25 MR. GILLEN: Okay. Thank you, Your Honor.



1 Let me give it a little more thought in light of what  
2 you suggested, and perhaps we can reach an  
3 accommodation.

4 THE COURT: Again, as I've reminded you, and  
5 it's not to insult your intelligence, you all know  
6 this, but it's a bench trial, and I'm perfectly  
7 capable of setting that aside for the purpose of my  
8 ruling in this case, and you're simply making it a  
9 part of the record for whatever you may want to do.

10 I mean, we can postulate, you know, to the  
11 end of the day about who might need it for what, but  
12 if I'm not going to use it and if you have a  
13 stipulation that I'm not going to use it for my  
14 determination, I don't know why it creates a problem.  
15 And it leaves both sides free to argue on another day  
16 and another time and another court, if that's  
17 necessary, with respect to what's in the report.  
18 There's not such urgency that we have to make this  
19 determination now.

20 MR. ROTHSCHILD: Your Honor, I just want to  
21 make clear that what we're proposing is not simply the  
22 admission of the report, but also the support for her  
23 report, meaning that there were many exhibits, many of  
24 which have been already admitted through her direct  
25 testimony, but there are also other exhibits that were

1 the corpus that she based her opinion on.

2 THE COURT: Well, and again, if you've got  
3 to argue in another tribunal that there were, for  
4 example, erroneous rulings as it related to letting  
5 hearsay in, which is certainly an argument that you  
6 made, a timely objection, then I don't know how you're  
7 going to do that if you don't have at least some part  
8 of the report, if not all of it, and the documents.  
9 You're going to argue in a vacuum. And it seems to me  
10 you may want to think about that.

11 MR. GILLEN: You have given me reason for  
12 thought, Your Honor, and I'd like another opportunity  
13 to revisit that issue with plaintiffs' counsel.

14 THE COURT: That's fine. And I'll just rely  
15 on you to -- either of you or any of you to bring that  
16 up at a later point in time. We'll tie up the loose  
17 end. I'm sure somebody will remind me.

18 I have some matters I have to attend to.  
19 Let's take about a 25-minute break at this point so I  
20 can do some things I need to do, and we'll reconvene  
21 at 3:25. We'll be in recess.

22 (Recess taken.)

23 THE COURT: We'll take our next witness.

24 MR. WALCZAK: The plaintiffs call Cindy  
25 Sneath.



1 A. Boys.

2 Q. Are either of them enrolled in the Dover  
3 Area School District?

4 A. Yeah. My oldest goes to Weiglestown  
5 Elementary.

6 Q. What grade is he in?

7 A. Second.

8 Q. And do you have any plans to leave the Dover  
9 Area School District?

10 A. No.

11 Q. Could you briefly tell us your educational  
12 background?

13 A. Graduated high school, diploma, life  
14 lessons, hopefully a dose of common sense.

15 Q. And are you employed outside the home?

16 A. Yes.

17 Q. And what do you do?

18 A. My husband and I own a small business. I'm  
19 vice president.

20 Q. What kind of business is that?

21 A. Appliance repair and installations.

22 Q. And do you have any particular background in  
23 science?

24 A. No.

25 Q. Do you have a personal interest in science?

1           A.    Not personally, no.  You know, I have an  
2 interest for my son, who actually shows a great  
3 interest in science.

4           Q.    And which child is that?

5           A.    My second-grader, my seven-year-old.

6           Q.    And why do you say he shows a great  
7 interest?

8           A.    Many reasons.  You know, don't get him  
9 started on talking about the NASA space shuttle  
10 program.  I mean, just everything he does is very  
11 science-oriented.  It's just something he obviously  
12 enjoys.

13          Q.    Prior to October of 2004, had you attended  
14 any Dover Area school board meetings?

15          A.    No.

16          Q.    Prior to October, 2004, did you learn that  
17 there was discussion about changes to the school  
18 district's biology curriculum?

19          A.    Yeah.

20          Q.    Now, if you didn't attend school board  
21 meetings, how did you learn that?

22          A.    Through the newspaper.  I get it delivered  
23 daily, the evening paper.

24          Q.    And which paper is that?

25          A.    That's the York Dispatch.

1 Q. And do you regularly read the newspaper?

2 A. Yeah, pretty regularly.

3 Q. And do you recall about when it was that you  
4 first realized that there was some controversy over  
5 the biology curriculum?

6 A. Looking back, you know, I'm thinking it was  
7 probably over the summer when it really first appeared  
8 on my radar screen. But it really didn't become a  
9 reality until October and when the policy was passed.

10 Q. When did you attend your first board  
11 meeting?

12 A. It would have been the very next board  
13 meeting.

14 Q. Very next meaning the one --

15 A. November. I'm thinking November would have  
16 been the next month. You know, they have two meetings  
17 a month, so that first one in November.

18 Q. So you didn't attend the October 18th board  
19 meeting?

20 A. Correct.

21 Q. It would have been two weeks after?

22 A. Right.

23 Q. So the only source of information you had  
24 prior to November about what the school district was  
25 doing or planning on doing was from news reports?

1 A. Correct.

2 Q. And can you tell us what it is that you  
3 understood was going on at these school board  
4 meetings?

5 MR. GILLEN: Objection, Your Honor. Just  
6 for the record preserving my hearsay objection on any  
7 information that she has no personal knowledge about  
8 but is relying on hearsay statements in the newspaper.

9 MR. WALCZAK: Your Honor, I'm asking her  
10 about her state of mind and what it is that she knew  
11 or what it is that she understood from whatever source  
12 she may have gotten it.

13 THE COURT: Why don't you rephrase the  
14 question to be precise as to the source. And you may  
15 have been precise, but I didn't hear it exactly that  
16 way. So I'll sustain the objection to the extent that  
17 you can be more precise. But consistent with my prior  
18 rulings, we may permit reference to the newspaper  
19 articles to refresh recollection, et cetera. So be a  
20 little bit more precise.

21 BY MR. WALCZAK:

22 Q. So you had not personally attended any  
23 school board meetings?

24 A. Correct.

25 Q. Had you framed some understanding, did you

1 have some understanding, whether right or wrong, about  
2 what was going on in the Dover School District prior  
3 to October?

4 A. Yes. I mean, you know, what I had been  
5 reading and some of the things I've read were  
6 outlining the controversy and basically stating that  
7 there's a science class and, you know, talk of  
8 creationism and religious ideas.

9 There were science people coming forward. I  
10 know the guy from York College had made a statement  
11 about it not being science. There was a guy from  
12 Kansas that had made a comment about this not being  
13 science. There was the word "creationism" being used.

14 And so, you know, it just seemed to be, you  
15 know, the science versus religious thing culminating.  
16 And that would have been my perception.

17 Q. At some point did you --

18 MR. GILLEN: Your Honor, I know that we've  
19 got a standing objection, and I don't want to vex the  
20 questioner or the witness, but, I mean, she has no  
21 personal knowledge, so what she's basically testifying  
22 to is hearsay.

23 THE COURT: Well, it doesn't go to the  
24 truth, does it?

25 MR. GILLEN: Well, I agree that if they're



1 not offering it for the truth of the matter and just  
2 why she's attending board meetings, that's fine, but  
3 to the extent that --

4 THE COURT: Well, that wasn't the question.  
5 The question wasn't why she attended board meetings,  
6 the question was what she had heard or knew about with  
7 the understanding she hadn't been to a board meeting.  
8 And now she's testified, as I understand it, sort of  
9 broadly about what she read in the newspaper, although  
10 I'm not sure of all the sources. The answer was  
11 perhaps a little bit broader than that. That doesn't  
12 go to the truth. It does go to the effect prong  
13 regardless of truth, doesn't it?

14 MR. GILLEN: Well, I would say no. As you  
15 know, that's an issue that we're going to revisit in  
16 connection with the reporters, but, I mean, to say  
17 that she's acting based on information she received in  
18 the newspapers saying, in effect, that information was  
19 true.

20 THE COURT: Well, we didn't get to that  
21 point yet.

22 MR. GILLEN: Right.

23 THE COURT: If we get to that point, that's  
24 a separate argument.

25 MR. GILLEN: Okay.

1 THE COURT: But right now, if you have a  
2 hearsay objection based upon the testimony that she  
3 just gave --

4 MR. GILLEN: Which is based on hearsay.

5 THE COURT: Well, it's not hearsay if it  
6 doesn't go to the truth, and it didn't go to the truth  
7 yet.

8 MR. GILLEN: Okay.

9 THE COURT: Now -- go ahead.

10 MR. GILLEN: I'm sorry, Your Honor. With  
11 that understanding that it's not evidence admissible  
12 for the purpose of the truth of the matter she's  
13 testifying to, that, you know, if it's what she  
14 thought, I can't object to that. I agree. But if  
15 it's offered for the truth, then I object based on  
16 hearsay.

17 MR. WALCZAK: It is offered purely to  
18 establish her state of mind and what her understanding  
19 was based on the sources that were available to her at  
20 the time. So this is not offered for the truth of  
21 what's in those articles.

22 MR. GILLEN: Okay.

23 THE COURT: And we may have a disagreement  
24 that we'll endure as to the effect prong under *Lemon*  
25 because I don't think it requires, in every case, that

1 the recipients -- that the information received by the  
2 recipient, in this case her, that it be true, does it?

3 MR. GILLEN: I would think that the effects  
4 can only be established by admissible evidence, and  
5 that is evidence that is admissible for substantive  
6 purposes.

7 Judge, I mean, I don't want to put too fine  
8 a point on it, but, you know, Chicken Little could  
9 have said the sky was falling, you know, Foxy-Woxy  
10 could have reported it, and Henny-Penny could have  
11 read it, thought it was true, but as the story goes,  
12 the King knew better.

13 And you can't convict someone based on  
14 hearsay. You can't demonstrate effects except through  
15 admissible evidence, and that admissible evidence is  
16 non-hearsay. And by any other measure, effects have  
17 to be proven by admissible evidence.

18 THE COURT: But the effect is subjective,  
19 isn't it?

20 MR. GILLEN: No, it's objective, and it's  
21 based on admissible evidence. It has to be in a court  
22 proceeding, Your Honor. You can't use the effects  
23 prong to let in a ton of hearsay. If that was the  
24 case, you could prove the whole case through newspaper  
25 clippings.

1 MR. WALCZAK: Your Honor, first of all, you  
2 know, I think if you look at *Doe versus Santa Fe*,  
3 certainly if you look at *McCreary*, I'm pretty sure in  
4 *Selman* -- and Mr. Katskee unfortunately left for the  
5 holidays, and he's our real expert on this, but I  
6 think in all of those cases, and in *Wallace versus*  
7 *Jaffrey*, the Court looked at newspaper articles to  
8 help gauge the effect on the community.

9 And this is not offered -- you know, this is  
10 not there for hearsay purposes. This is not for the  
11 truth of the matter asserted. It is for what the  
12 reasonable, average person in the community is seeing  
13 or believing. And, you know, as long as I don't have  
14 to answer with a countering rhyme, let me just --  
15 which I was duly impressed by that, but this is --

16 MR. GILLEN: I've got young kids.

17 MR. WALCZAK: I do, too, but they're older.

18 MR. GILLEN: And it fits.

19 MR. WALCZAK: Your Honor, it is the fact  
20 that this is out there, right or wrong. And some  
21 people are forming an impression about that, again,  
22 right or wrong. But the impression here in the  
23 community is, based on reading everything that's being  
24 published, that this is a religious dispute.

25 THE COURT: How else do you get effect?

1 MR. GILLEN: By bringing in evidence of what  
2 actually happened and measuring it on the part of  
3 witnesses who were actually there.

4 THE COURT: But the witness who was there,  
5 once it hits that witness, it becomes a subjective  
6 exercise, whether they're there or whether they read  
7 it in the paper.

8 In other words, you have a dispute about  
9 what was said at these school board meetings. You  
10 have school board members who deny, as I understand  
11 it, that they said certain things that have been  
12 attributed to them. So if a witness says that he or  
13 she heard something and that's already in dispute,  
14 what am I to do with that?

15 MR. GILLEN: But, Your Honor, from my  
16 perspective, that's the point. I mean, the effect of  
17 a newspaper article is the effect of a newspaper  
18 article. And that newspaper article, if it could be  
19 established without speculation, for one thing -- I  
20 mean, just look at what you're being asked to do here.  
21 Ten thousand people could have read the paper. One  
22 could have said, oh, my heavens, this is nonsense.  
23 Another could have said, you know, they're at it  
24 again. Who knows. Number one, it's pure speculation.

25 Number two, the effect is the effect of what

1 the reporter said. Look at these things. They look  
2 at what one person has said, arguably, in a board  
3 meeting and leave out what ten have said. How could  
4 the board be responsible for that? It's hearsay.

5 THE COURT: Well, I think you make it too  
6 fine a point. In the milieu and in the array of  
7 information available to this average person, and I  
8 think the cases are somewhat in -- they're not in  
9 conflict, but are we -- who is the recipient?

10 I think some of them set up a sort of  
11 reasonably intelligent person, but I think you're  
12 placing too fine a point on it. I think within the  
13 broad array of informational sources for measuring the  
14 effect prong, in some cases, not all of them, would be  
15 a newspaper.

16 MR. GILLEN: But, Your Honor, to --

17 THE COURT: And just to finish before you  
18 argue.

19 MR. GILLEN: Sure.

20 THE COURT: What you're saying is for a  
21 newspaper to be that, the veracity of the newspaper  
22 article has to be tested. And once it goes through  
23 that gate and it passes, then it's all right for the  
24 effect prong, if I hear you correctly.

25 MR. GILLEN: What I'm saying is, if it's not

1 hearsay, then it is evidence and then it's admissible  
2 for the purpose of proving liability, but if it's  
3 hearsay, it is not. And by any other measure to say  
4 that paper clippings are the proof of effect is to say  
5 that they're proof of true effect.

6 THE COURT: So you're saying that if the  
7 reporters testify and if I establish that the articles  
8 are -- I know you don't want this, but if we get to  
9 that point and I say that having tested the veracity  
10 of the articles based on the reporters' testimony that  
11 the articles are accurate and represent a true account  
12 of what they saw and heard at the school board  
13 meetings and if I admit that over your objection,  
14 understandably, that that -- we're over that hurdle.

15 MR. GILLEN: I'm saying that you can admit  
16 them if you find they are an exception to the hearsay  
17 rule. Our position is still that it's not proof of  
18 effects because the newspaper article itself is the  
19 act of a newspaper reporter and not the board.

20 And if my clients are believed, what the  
21 newspaper reporter chose to do is to create a totally  
22 false and misleading impression about the actual board  
23 deliberations, and therefore, no, they would not be --  
24 I acknowledge, you are the gatekeeper on evidence, but  
25 it wouldn't be proof of the effects because it's the

1 proof of what a newspaper reporter wrote.

2 THE COURT: Well, I'll close the loop by  
3 saying this. I'm going to overrule the objection on  
4 that basis. I think what you're left with is not  
5 necessarily a technical argument on what is hearsay  
6 and what's not. I don't see that. I don't think that  
7 the hearsay objection can operate to prevent this type  
8 of effect testimony.

9 However, I don't think that you're then  
10 estopped from arguing that the information was so  
11 unreliable that it ought not be considered for the  
12 effect prong. I would rather err on the side of  
13 letting it in at this point. You can argue from a  
14 qualitative standpoint that it's just so unreliable  
15 that a reasonable person should not have received that  
16 for the effect that it's -- as it's being attributed.

17 MR. GILLEN: As you know, Your Honor, I'll  
18 make the arguments you let me make, and I'll deal with  
19 the rulings that you make.

20 THE COURT: All right.

21 MR. GILLEN: That's all I can say.

22 MR. WALCZAK: Your Honor, let me just make  
23 one last point. In *McCreary*, which is the Supreme  
24 Court's most recent pronouncement on the *Lemon* test,  
25 the Court there -- there was a long discussion, and



1 they set up the reasonably informed observer. It's  
2 not the reasonably informed observer who attended  
3 those McCreary County board meetings.

4 THE COURT: I understand that.

5 MR. WALCZAK: It's the reasonably informed  
6 observer, period. And they don't specify whether, you  
7 know, it has to be established as accurate or  
8 inaccurate information. And, you know, I mean,  
9 Ms. Sneath, to some extent, is a person -- or to every  
10 extent is a person who lives in this district, whose  
11 information she got, like other people got, through  
12 the newspaper, and what she knew as of October 18th  
13 came from the newspaper, and she formed an  
14 understanding.

15 THE COURT: Well, I will grant that all of  
16 us should go back and look at the cases again, as if  
17 we haven't already. We certainly have. But I think  
18 you'll agree -- I think you'll agree that the cases  
19 are not consistent in terms of *McCreary* does say --  
20 and that's where the word "reasonable" popped into my  
21 head -- sets up a particular test. But the cases are  
22 somewhat inconsistent, and I think there's been some  
23 confusion judicially with respect to who the recipient  
24 is for the effect prong. And I've got to negotiate  
25 that at some point.

1           But for the purpose of this witness, I'm  
2 going to err on the side of caution and let it in  
3 subject to, as I said, an argument by the defense  
4 that, for example, consistent with *McCreary*, that that  
5 reasonable observer should not have accepted that on  
6 the effect prong.

7           I frankly think that's your better argument  
8 to make than to stand so clinically on hearsay,  
9 because I don't read the cases as saying that you had  
10 to make a threshold hearsay determination on the  
11 effect prong. So with that --

12           MR. GILLEN: I'll bear that in mind, Your  
13 Honor.

14           THE COURT: With that extended, complicated  
15 academic argument behind us, we'll proceed. Was there  
16 a question on the floor?

17           MR. WALCZAK: Let me ask another question.  
18 I'm not sure if there was.

19 BY MR. WALCZAK:

20           Q. So was there some point in time where your  
21 interest really became focused on what was going on at  
22 the school board meetings?

23           A. Do you mean, like, prior to the October 8th  
24 or just anytime?

25           Q. At any point. As I understand it, you were

1 kind of generally following what was going on through  
2 the news media?

3 A. Yeah. And it was very general. And that  
4 would have started probably sometime in the summer, I  
5 would think.

6 Q. But at some point your interest became  
7 acute?

8 A. Yes.

9 Q. And when was that?

10 A. The closer it got to October 18th. And then  
11 that meeting, you know, that next day in the paper  
12 they had passed the curriculum change, and reality set  
13 in, you know, this has happened.

14 Q. And was it about that time that you decided  
15 that you wanted to find out more about this topic of  
16 intelligent design?

17 A. Yes.

18 Q. And what did you do to educate yourself  
19 about intelligent design?

20 A. Well, I had never heard the terminology, so,  
21 you know, my inclination is typically to go to the  
22 Internet, and that's where I started my research. And  
23 there was a lot of information available.

24 Q. So let me just ask you, obviously you're on  
25 the Internet, you're Internet savvy, how did you go

1 about researching intelligent design? Did you go to  
2 Google or --

3 A. Yeah. Oh, yes, I always use Google.

4 Q. And what did you do?

5 A. Just type in intelligent design, and you get  
6 a lot of hits. There's a lot of information to weed  
7 through. There's a lot of just news lists, people  
8 discussing it, but then there were more specific  
9 places that, you know, gave you more specific  
10 information.

11 Q. And how long did you spend looking at  
12 intelligent design?

13 A. I researched it quite a bit. You know,  
14 there was a lot of material to read. A lot of  
15 times -- you know, you have small kids, you get  
16 interrupted, you have to make dinner, whatever. You  
17 know what I mean? But I'd go back in spare time that  
18 I had to kind of look into it, because the further you  
19 looked into it, the more I realized that this was not  
20 just a local Dover issue. I became very aware that  
21 this is an issue that is, you know, widespread.

22 Q. Do you remember some of the Web sites that  
23 popped up when you did a search for intelligent  
24 design?

25 A. Panda's Thumb, which led me to the NCSE Web

1 site, which was like a wealth of information. That  
2 was really the big one that told me that, you know,  
3 this was not just a small little issue here. I mean,  
4 there were Web sites that people had done that had  
5 been active in what was going on, and they kind of did  
6 their own little pages with information that they  
7 knew, specifically addressing how -- the method of  
8 getting this done by going and appealing to a school  
9 board and getting a few sympathetic members, just  
10 outlining different things like that. So it was, you  
11 know, just a wide variety.

12 Q. Did you find information in your Internet  
13 search about the Wedge?

14 A. I'm sorry?

15 Q. Did you find information through your  
16 Internet search about the Wedge?

17 A. Yes, yes. And I don't remember specifically  
18 what site it was. There was a link to it. And then,  
19 yeah, I read the Wedge document, which was kind of a  
20 real eye-opener for me.

21 Q. And based on your own personal Internet  
22 research, did you form some opinion as to what  
23 intelligent design was?

24 A. Yeah.

25 Q. And what was that opinion?

1           A.    It's basically equated to creationism.  
2    It's, you know, all the same, you know, ideas with a  
3    new name, is really what it appeared to me to be.

4           Q.    Now, you started going to board meetings, I  
5    believe it was the first meeting in November?

6           A.    Yes.

7           Q.    And that was because of your concern that  
8    you thought they were now teaching creationism?

9           A.    Yeah.  What is going on?  I mean, it was  
10   time to get a firsthand account.

11          Q.    And at some board meeting -- and have you  
12   been a regular attendee since November?

13          A.    I went to every board meeting until, I  
14   think, over the summer.  I just -- you know, you kind  
15   of need a break after a while.  But up until that  
16   point, yeah, every meeting.

17          Q.    And this was purely because of your concern  
18   over this issue?

19          A.    Absolutely.

20          Q.    And at one of the November board meetings,  
21   do you recall a board member Angie Yingling making  
22   some comments?

23          A.    Yeah.  She wasn't making comments while she  
24   was sitting -- you know, it wasn't during the meeting.  
25   I think it was prior to an executive meeting.  And she

1 was making comments to a reporter and --

2 Q. And were you present for these comments?

3 A. Yeah. I mean, it's a small room. And when  
4 the meeting is done, everybody is kind of milling  
5 around. You know what I mean? You're all kind of  
6 right there. And we happened to be standing there,  
7 and she was making the comment that she had regretted  
8 her decision and that she had been called an atheist,  
9 she had been called un-Christian.

10 And I felt bad because she had also talked  
11 about, at that board meeting, about giving her  
12 resignation. Now, she didn't do it at that meeting.  
13 It was a long time until she ended up actually -- I  
14 think officially stepping down. But that was like the  
15 first time she talked about it. And so with her  
16 saying that and then making these comments, it kind of  
17 like made me feel bad.

18 And I interjected and I said to her, don't  
19 quit. Why should you quit? You know, if you feel  
20 strongly about the issue, you've changed your mind,  
21 just keep revisiting the issue. And that was really  
22 the extent of the conversation.

23 Q. But you overheard her make comments that  
24 other board members had called her an atheist?

25 A. That's what she was saying as I was standing

1 there. And then, you know, as soon as she was done  
2 saying that, I, like, intervened and encouraged her  
3 not to quit.

4 Q. And do you remember the words that she used?  
5 Did she use the word "atheist"?

6 A. Yes. She used the word "atheist," and she  
7 used the word "un-Christian."

8 Q. Now, did you have an opportunity to speak to  
9 Ms. Yingling again after that meeting?

10 A. She -- I can't remember exactly which board  
11 meeting, but there was a particular board meeting she  
12 had handed me her business card, and she was like,  
13 call me, you know, and so I did. And I think I called  
14 her -- it had to have been sometime in January. I  
15 don't know, you know, exactly when.

16 Q. And this is January, 2005?

17 A. Correct. To see what she wanted. And she  
18 actually wanted to know if I wanted to run for school  
19 board with her, because at that time I think, you  
20 know, that she was trying to make future plans. And,  
21 you know, I really wasn't interested in doing that.  
22 But, you know, the conversation kind of went from  
23 there.

24 And I think it was an emotional time for  
25 her. She was very emotional. She was very upset.



1 She felt she had been treated very badly. And I  
2 remember her stating that she was working on her  
3 resignation speech. So I know it was before she  
4 actually, you know, resigned.

5 And, again, she kind of reiterated that same  
6 thing to me, that, you know, if you're not their kind  
7 of Christian or something to that effect and -- you  
8 know, she was emotional.

9 Q. But do you remember those words, "their kind  
10 of Christian," being said by her?

11 A. Yeah.

12 MR. WALCZAK: Your Honor, may I approach the  
13 witness?

14 THE COURT: You may.

15 MR. WALCZAK: Matt, could you put up P127,  
16 please.

17 BY MR. WALCZAK:

18 Q. Do you recognize what's been marked as  
19 Plaintiffs' Exhibit 127?

20 A. Yes, I do.

21 Q. And what is it?

22 A. That I received in the mail. It was a piece  
23 pretty much advocating what they had -- the curriculum  
24 update that they had -- or the curriculum change that  
25 they had passed.

1 Q. When did you receive this?

2 A. It's dated February, so I'm assuming,  
3 because dates aren't always real good with me.

4 Q. And how did you receive this?

5 A. Through the mail.

6 Q. Through the U.S. mail?

7 A. Yeah. And I know other people that had  
8 gotten it, as well. I, you know, had talked to  
9 different people, and it was kind of the buzz of the  
10 news going around that everybody had gotten this.

11 Q. Now, you just characterized this as  
12 advocating intelligent design. I mean, why do you say  
13 that?

14 A. Well, that was my perception. Two days  
15 after I received this, I got a regular newsletter in  
16 the mail. And, you know, this wasn't just telling  
17 people this is what we've done, this is, look what  
18 we've done, and Senator Rick Santorum agrees in the No  
19 Child Left Behind, and, you know, all the -- what I  
20 consider propaganda to go behind it.

21 Q. So you felt like they were trying to  
22 convince you that intelligent design is a scientific  
23 alternative to evolution?

24 A. Not just me, the community. That was my  
25 perception.

1 Q. Now, you indicated that two days later you  
2 got a newsletter in the mail. Who did you get a  
3 newsletter from?

4 A. That's the regular Dover newsletter that  
5 comes out.

6 Q. And how often does that newsletter come?

7 A. That I don't -- four times a year? I'm not  
8 sure. But it's like -- it always looks the same. You  
9 know, you can tell it's the regular Dover newsletter.

10 Q. So there is a newsletter that comes during a  
11 regular schedule?

12 A. Yes, periodically.

13 Q. So is it clear to you that this biology  
14 curriculum update was not a regular newsletter?

15 A. Well, I -- you know, in my mind, again, if  
16 you just want to notify people about what you've done  
17 or what a school board has done, I think it would have  
18 just been reasonable to put it in a regular  
19 newsletter. I mean, obviously this was an extra  
20 expense to taxpayers. And as a taxpayer, you're  
21 concerned about that.

22 Q. So this is not how you would want your tax  
23 dollars spent?

24 A. No.

25 Q. Now, you said you have a seven and a

1 four-year-old. Can your four-year-old read this  
2 newsletter?

3 A. No.

4 Q. Could your -- it sounds like you have a  
5 quite inquiring seven-year-old. Could he read this  
6 newsletter?

7 A. He could read a lot of it. A couple words  
8 we might have to help him out, but he's a pretty good  
9 reader.

10 Q. Is it your perception that this was geared  
11 towards your children?

12 A. No, no, I would say this is geared towards  
13 parents, taxpayers, constituents.

14 Q. Do you believe you've been harmed by what  
15 the Dover Area School District has done in promoting  
16 intelligent design?

17 A. Yeah, I do.

18 Q. And how have you been harmed?

19 A. Well, you know, as a parent, you want to be  
20 proactive in your child's education. I mean,  
21 obviously I'm not an educator. I have no big degrees.  
22 I want to be proactive, but I depend on the school  
23 district to provide the fundamentals. And I consider  
24 evolution to be a fundamental of science.

25 And I'm quite concerned about a cautionary

1 statement. I am quite concerned about this  
2 intelligent design idea. I do think it's confusing.  
3 I don't think it adds to his education.

4 And at the end of the day, I mean, in my  
5 mind, intelligent designer, I mean, the word  
6 "designer" is a synonym for Creator, and, you know,  
7 that takes a leap of faith for me, you know. And I  
8 think it's my privilege to guide them in matters of  
9 faith, not a science teacher, not an administrator,  
10 and not the Dover Area School Board.

11 MR. WALCZAK: I have no further questions.

12 THE COURT: All right. Thank you,  
13 Mr. Walczak. Mr. Gillen, cross-examine.

14 CROSS-EXAMINATION

15 BY MR. GILLEN:

16 Q. Mrs. Sneath.

17 A. Hello, Mr. Gillen.

18 Q. Good afternoon. I met you at your  
19 deposition and will ask you a few questions today  
20 about your trial testimony. I just want to again make  
21 clear now, you didn't attend board meetings until  
22 November, 2004. Correct?

23 A. That's correct.

24 Q. And you didn't speak with any board members  
25 prior to November, 2004. Correct?

1 A. That would be correct.

2 Q. And you didn't speak with any of the science  
3 faculty at the high school prior to that time.

4 Correct?

5 A. That's correct.

6 Q. In fact, you've never spoken to the science  
7 faculty. Correct?

8 A. Yeah. No reason.

9 Q. You say that you -- you've done some  
10 personal reading in connection with this dispute about  
11 science?

12 A. Yes.

13 Q. And you've looked at material on the  
14 Internet. Correct?

15 A. That's correct.

16 Q. And you've looked at material by Discovery  
17 Institute. Correct?

18 A. I did go to the Discovery Institute Web  
19 site, but I can't say that there was a whole lot of  
20 information there. It's not like they critique their  
21 own, you know, ideas, and so, you know, it wasn't that  
22 great of a Web site, actually.

23 Q. Sure. But you did learn that approximately  
24 300 scientists agree with the idea that they were  
25 promoting? Well, let me ask you this.

1           A.    I have heard that somewhere, but I don't  
2 know if I actually obtained that through their Web  
3 site.

4           MR. GILLEN:   Your Honor, may I approach the  
5 witness?

6           THE COURT:   You may.

7           MR. GILLEN:   Thank you.

8 BY MR. GILLEN:

9           Q.    Mrs. Sneath, I'd ask you to look at your  
10 deposition, which I have just handed you, Page 9.

11          A.    Page 9.

12          Q.    Looking at that, it references that you've  
13 heard that 300 scientists agree with this idea?

14          A.    Yeah, I heard it somewhere. I just  
15 wasn't -- I thought you might have been asking did I  
16 read that from their Web site, and that I did not  
17 remember doing. But I have heard that comment that  
18 300 scientists have supported it.

19          Q.    And you've read, you said, somewhere on the  
20 Internet about the Wedge strategy?

21          A.    Yes.

22          Q.    Have you ever read a document called, Wedge  
23 Strategy, So What?

24          A.    No.

25          Q.    Now, there was a time in which you believed

1 the board was going to require the teaching of  
2 intelligent design with equal time in the classroom.  
3 Correct?

4 A. I think it was my understanding that it  
5 could be taught if the teacher wanted to, not  
6 necessarily the equal time.

7 Q. Okay. And that understanding was based on  
8 what you read in the paper?

9 A. Yes, that would have been.

10 Q. But the board didn't do that. Correct?

11 A. No, not as it stands now. Is that what  
12 you're asking?

13 Q. Yes.

14 A. Okay.

15 Q. Likewise, you had a belief that the text of  
16 *Pandas* was going to be used in the classroom.  
17 Correct?

18 A. Originally, yes, my understanding was that  
19 it was to be placed in the science classroom.

20 Q. But they did not use it in the classroom.  
21 Correct?

22 A. Correct.

23 Q. It's in the library. Correct?

24 A. Correct.

25 Q. And you don't have an objection to that?



1           A.    I don't have an objection to them being in  
2   the library.  I probably have an objection to, you  
3   know, 20 copies being in the library just for the fact  
4   that, I mean, libraries don't have much space, and, I  
5   mean, 20 books of any one book is kind of a waste of  
6   space.

7           Q.    Have you been to the library, Mrs. Sneath?

8           A.    Yes.

9           Q.    Do you know how many books are on the shelf  
10  right now?

11          A.    24, I believe.

12          Q.    So your objection is based on the space?

13          A.    Yeah.  A library just has a limited amount  
14  of space, and I don't remember seeing 20 of any other  
15  book being there.  I mean, to me, put a couple out and  
16  let's leave some room for some others, perhaps.

17          Q.    You understand it's a reference text.  
18  Correct?

19          A.    I understand they call it a reference text,  
20  correct.

21          Q.    And you don't?

22          A.    No.  I don't really consider it a reference  
23  text.

24          Q.    You don't have any science education, do  
25  you, Mrs. Sneath?

1 A. That's correct.

2 Q. Now, you've said that you recall Angie  
3 Yingling saying something about being called an  
4 atheist or un-Christian?

5 A. That's correct.

6 Q. You know that Angie Yingling voted for the  
7 curriculum change. Correct?

8 A. Originally she did, that's correct.

9 Q. But it's also true that you can't  
10 necessarily make the connection between her statements  
11 and her vote on the curriculum. Is that correct?

12 A. No, I wouldn't say that I could. I mean,  
13 really what I was saying is that she had regretted  
14 making that decision to vote for it and made the  
15 comments in relationship to that.

16 Q. But you can't necessarily make a connection  
17 between those comments and her vote on the curriculum  
18 change, can you?

19 A. No, I can't.

20 Q. Now, I understand you believe that  
21 intelligent design is not science based on what you've  
22 read on the Internet. Correct?

23 A. Yes, that is my belief.

24 Q. And based on your reading, also, your  
25 personal reading, you have the opinion that

1 intelligent design is creationism. Correct?

2 A. That is correct.

3 Q. I want to ask you about the newsletter. Is  
4 it your position that the district shouldn't have put  
5 out a newsletter addressing this controversy?

6 A. No, that's not my position. I think the  
7 district could have easily advised its constituents in  
8 the regular newsletter instead of paying extra money  
9 for this newsletter. And to me this was not simply a  
10 newsletter, this is what we've done. I mean, this was  
11 more than that. This was what we've done, and this is  
12 who stands behind it, and this is, you know, what  
13 makes it a great thing.

14 Q. So it's information about intelligent  
15 design. Correct?

16 A. Yes, it's advocating intelligent design.

17 Q. And it's information about the curriculum  
18 change. Correct?

19 A. Yes.

20 Q. So that would be additional information you  
21 received in addition to your personal reading on the  
22 Internet and so on. Correct?

23 A. Yeah.

24 Q. Your children are what ages, Mrs. Sneath?

25 A. Seven and four.

1 Q. So none of them have had the statement read  
2 to them. Correct?

3 A. No.

4 Q. You understand that evolutionary theory is  
5 the theory that's being taught in classrooms at Dover?

6 A. That is my understanding.

7 (Buzzing noise.)

8 THE COURT: That's a trick we do to try and  
9 limit cross-examination.

10 MR. GILLEN: Judge, I have been a model of  
11 brevity.

12 THE COURT: Just keep your voice up and stay  
13 away from the mic.

14 MR. GILLEN: I'll try and do that.

15 BY MR. GILLEN:

16 Q. You understand that the biology text that  
17 was recommended by the science faculty was, in fact,  
18 purchased?

19 A. Yes, I do understand.

20 Q. That's the text that's assigned to students.  
21 Correct?

22 A. Yes.

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

25 THE COURT: You didn't have to take it that

1 seriously. All right. Any redirect by Mr. Walczak?

2 MR. WALCZAK: No, Your Honor.

3 THE COURT: We could take another witness  
4 and at least get started if you want to, if you have  
5 one.

6 MR. HARVEY: Yes, Your Honor.

7 THE COURT: Why don't we do that.

8 MR. HARVEY: The plaintiffs call to the  
9 stand Plaintiff Steve Stough.

10 THE COURT: And I noted no exhibits. I'll  
11 stand corrected if --

12 MR. WALCZAK: It's just the newsletter which  
13 is already in evidence.

14 THE COURT: It's already in. All right.

15 STEVEN STOUGH, called as a witness, having  
16 been duly sworn or affirmed, testified as follows:

17 THE CLERK: State your name and spell your  
18 name for the record.

19 THE WITNESS: My name is Steve Stough,  
20 S-t-e-v-e-n, S-t-o-u-g-h.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MR. HARVEY:

24 Q. Good afternoon, Mr. Stough. Could you  
25 please tell us where you live.

1           A.    Yes.  I reside at 4407 Belmont Road, Dover,  
2 Pennsylvania, 17315.

3           Q.    And how long have you lived there?

4           A.    I've lived at that address for 12 years.  
5 I've lived in Dover Township for 20.

6           Q.    Do you have any children?

7           A.    Yes.  I have a son who is 21 and a daughter  
8 who is 14.

9           Q.    Could you please tell us the first name of  
10 your daughter?

11          A.    Sure.  My daughter's first name is Ashley.

12          Q.    And where does Ashley attend school?

13          A.    She attends school at the Dover Area High  
14 School.

15          Q.    What grade is she in?

16          A.    She's in the ninth grade.

17          Q.    Is she taking biology right now?

18          A.    Yes, she is.  She's in Jen Miller's honors  
19 class.

20          Q.    Can you tell us what you do for a living?

21          A.    Yes.  I teach life science at Southern  
22 Middle School in Southern York County School District.

23          Q.    What is life science?

24          A.    It's a seventh-grade life science  
25 curriculum.  About a third of the year includes work

1 with inquiries, scientific method. Then two-thirds of  
2 the year would be a very basic life science class,  
3 characteristics of living things, chemistry of living  
4 things, cell theory, germ theory, at a very basic  
5 level.

6 Q. You're a science teacher?

7 A. Yes.

8 Q. How long have you been a science teacher?

9 A. I've been a science teacher -- I've been a  
10 teacher for 29 years.

11 Q. Have you been teaching science that whole  
12 time?

13 A. No, I have not. I've been teaching science  
14 for about 15 years.

15 Q. Do you have any other jobs other than your  
16 job as a science teacher?

17 A. Sure. At Southern York County School  
18 District, Susquehannock is the high school. I'm the  
19 head boys and girls track and field coach, and I'm  
20 also the head cross-country coach for boys and girls.

21 Additionally, I serve on the strategic  
22 planning committee and am part of the staff  
23 utilization subcommittee and the technology  
24 subcommittee.

25 Q. Please tell us just briefly your educational

1 background.

2 A. Okay. I graduated from West York in 1973.  
3 In 1977, I graduated from Penn State with a degree in  
4 bachelor's of elementary education. I continued my  
5 education at Millersville and Wilkes and received my  
6 master's equivalency from the Department of Education.  
7 And as a result of the No Child Left Behind, I had to  
8 take a practice test to get additional certification  
9 so that I could teach science in the middle school.

10 Q. And how old are you?

11 A. I'm 50 years old.

12 Q. Do you read a newspaper?

13 A. Yes, I do.

14 Q. Tell us what newspapers you read on a  
15 regular basis.

16 A. I read the York Dispatch and the York Daily  
17 Record.

18 Q. How often do you read them?

19 A. I read them every day.

20 MR. GILLEN: Your Honor, just for the  
21 record, a standing objection to the hearsay from the  
22 newspaper.

23 THE COURT: All right. The objection is  
24 noted for the same reason as interposed with the last  
25 witness. The objection is overruled.



1 MR. GILLEN: Thank you.

2 BY MR. HARVEY:

3 Q. Did you say you read them on a daily basis?

4 A. I read them every day, yes.

5 Q. How long have you been reading them on a  
6 daily basis?

7 A. For a long time, many years.

8 Q. What about when you're on vacation, do you  
9 read them when you're on vacation?

10 A. This is my sickness. I'll take my computer  
11 along, and we have dial-up service, and I will read  
12 them online every day.

13 Q. Did you attend any meetings of the Dover  
14 Area School Board in 2004?

15 A. In 2004, I attended the December 1st  
16 meeting, the December 4th meeting, and the  
17 December 20th meeting.

18 Q. So you didn't attend any meetings in 2004  
19 before December?

20 A. No, I did not.

21 Q. And did there come a time when you learned  
22 that the Dover School Board was considering approval  
23 of a biology textbook?

24 A. Yes.

25 Q. Do you know when that was?

1 A. That would have been in early June of 2004.

2 Q. Tell us, please, the source of your  
3 information.

4 A. That would be the newspapers, both papers.

5 Q. And I'd like to know, do you remember  
6 learning about specific meetings in June of 2004?

7 A. Yes, yes.

8 Q. Tell me what specific meetings you recall  
9 learning about.

10 A. Well, I can't tell you the exact dates, but  
11 there were two meetings in June, I think early June,  
12 and I read about both of them in the paper.

13 Q. Was one on June 7th and one on June 14th?

14 A. That sounds right.

15 Q. Now, tell us, if you can, what you can  
16 remember learning from what you read in the newspaper  
17 about the June 7th school board meeting.

18 A. The June 7th school board meeting, what I  
19 can remember reading is that a former school board  
20 member, Barrie Callahan, had approached the board  
21 questioning why the students still did not have an  
22 adopted biology text for the ninth-grade biology  
23 course. Apparently there had been money allocated for  
24 that in a previous budget, and at this point there  
25 still had been no textbook approved. It seemed as if

1 there was a textbook that was -- the teachers wanted  
2 approved, the dragonfly book. She was questioning why  
3 they didn't have a textbook at that point.

4 Also, from that then my understanding is  
5 that Board Member Buckingham said that he was  
6 seeking -- well, that the book was laced with  
7 Darwinism, that he wanted to see some equal treatment  
8 of creationism along with evolution. Board Member  
9 Bonsell said that there were only two theories, and  
10 one was evolution, one was creationism.

11 Board Member Buckingham said that the  
12 separation of church and state was a myth. And I also  
13 believe that that was the meeting that Max Pell spoke,  
14 a student, and he addressed the board just saying  
15 that, you know, evolution is the only thing that they  
16 should be teaching, that teaching creationism could  
17 cause them problems.

18 Q. I've handed you a notebook of materials.  
19 Please open it to what's been marked as P44 and tell  
20 us if you've ever seen it before.

21 A. Yes, I've seen this.

22 Q. When have you seen it before?

23 A. I would have seen this probably the day that  
24 it was -- well, yeah, the day that it was printed.

25 Q. And have you read it more recently?

1           A.    I went over many of these articles recently,  
2    yes.

3           Q.    So is this -- P44, this is an article from  
4    the York Dispatch that was published on June the 8th  
5    of 2004.  Isn't that right?

6           A.    That's correct.

7           Q.    And it concerns a meeting of the school  
8    board?

9           A.    That's correct.

10          Q.    And you read it at the time?

11          A.    Yes.

12          Q.    Now, I'd like to ask you to please take a  
13    look at what's been marked as P45, and I'm going to  
14    ask you the same question.

15          A.    Okay.

16          Q.    And have you had a chance to look at that  
17    article?

18          A.    Yes, I have.

19          Q.    And had you read that before just now?

20          A.    Yes.

21          Q.    Did you read it at the time?

22          A.    Yes, absolutely.

23          Q.    And have you read it in preparation for your  
24    testimony?

25          A.    Yes, I did.

1 Q. And it's an article from the York Dispatch  
2 on June 9th of 2004 that also deals with this board  
3 meeting that was held on June the 7th of 2004. Isn't  
4 that true?

5 A. That's correct.

6 Q. Now, I'd like you to please take a look at  
7 what's been marked as P46. And I'm going to ask you  
8 the same questions with respect to that article. Have  
9 you had a chance to look at it?

10 A. Yes, I have.

11 Q. Did you read it at or around the time that  
12 it came out?

13 A. Yes, I did.

14 Q. And that was at or around June the 9th of  
15 2004?

16 A. Yes.

17 Q. And this P46, this is, in fact, an article  
18 that you read at the time from the York Daily Record.  
19 Isn't that correct?

20 A. That's correct.

21 Q. And just for the record, this one is by  
22 Mr. Joseph Maldonado?

23 A. Yes, yes.

24 Q. And let's just go back and give credit where  
25 credit is due. On P44, that was an article from Heidi

1 Bernhard-Bubb?

2 A. That's correct.

3 Q. And P45 was also an article by Heidi  
4 Bernhard-Bubb. Correct?

5 A. That's correct.

6 Q. And then finally please take a look at  
7 what's been marked as P47, and I'm going to ask you  
8 the same questions. Have you had a chance to look at  
9 that?

10 A. Yes, I have.

11 Q. That's an article dated June the 10th of  
12 2004 from the York Daily Record?

13 A. That's correct.

14 Q. And the author is Joseph Maldonado?

15 A. Yes.

16 Q. And is this an article that you read at or  
17 around the date of it, June the 10th of 2004?

18 A. Yes, I did.

19 Q. And you've reviewed it more recently?

20 A. That's correct.

21 Q. Now, let's turn now to the June 14th meeting  
22 of the school board. You remember, as you stated  
23 before, reading in the paper about this meeting.  
24 Correct?

25 A. Yes, I did.

1 Q. Tell us what you can remember learning from  
2 what you read in the newspaper about the meeting of  
3 the school board held on June the 14th, 2004.

4 A. What I remember reading is that Board Member  
5 Buckingham began -- or at the beginning of the meeting  
6 apologized to the community, to the people at the  
7 board meeting for his actions prior to that.

8 But then, again, I think the issues became  
9 the textbook adoption laced with Darwinism. Again I  
10 think he repeated the claim that separation was a  
11 myth. And I think that was the meeting where he said  
12 that someone died on a Cross for us 2000 years ago,  
13 can't we do something for Him.

14 Q. Now, I'd like you to take a look at what's  
15 been marked as Exhibit 53 in your notebook. Have you  
16 had a chance to look at that?

17 A. Yes, I have.

18 Q. That is an article dated June the 15th of  
19 2004 from the York Daily Record written by Joseph  
20 Maldonado, isn't it?

21 A. That's correct.

22 Q. And did you read that at or around that  
23 date?

24 A. Yes, I did.

25 Q. And you read it more recently in preparation

1 for your testimony?

2 A. Yes.

3 Q. And it deals with the June 14th meeting of  
4 the school board?

5 A. Yes.

6 Q. And now, please, if you would, take a look  
7 at what's been marked as P54.

8 A. Okay.

9 Q. That's an article from the York Dispatch  
10 dated June the 15th, 2004, written by Heidi  
11 Bernhard-Bubb. Isn't that correct?

12 A. That's correct.

13 Q. And it also deals with the subject of the  
14 June 14th school board meeting?

15 A. Yes.

16 Q. And you read that article at or around that  
17 date?

18 A. Yes, I did.

19 Q. And you read it again more recently to help  
20 you prepare today?

21 A. Yes.

22 Q. Now, there was a meeting -- do you remember  
23 reading about a meeting in July of 2004?

24 A. Yes.

25 Q. What do you remember reading about that?



1           A.    The only thing I remember about that  
2 meeting -- this gave me the impression that things  
3 were going well with the textbook adoption -- was that  
4 they had found a new edition of the dragonfly book,  
5 that they were looking at a 2002 edition, they had  
6 found a 2004 edition, and they were going to review  
7 that further.

8           Q.    And, again, you learned this from reading  
9 this in the newspaper?

10          A.    That's correct.

11          Q.    And if you would, please take a moment to  
12 look at what's been marked as P64 in your notebook.

13          A.    Okay.

14          Q.    Have you had a chance to review that?

15          A.    Yes.

16          Q.    That's an article dated July the 13th of  
17 2004 from the York Dispatch written by Heidi  
18 Bernhard-Bubb, isn't it?

19          A.    That's correct.

20          Q.    And it's reporting on a July meeting of the  
21 Dover School Board?

22          A.    Yes.

23          Q.    And you read that at the time?

24          A.    Yes, I did, yes.

25          Q.    Now, did you learn about a meeting in August

1 of 2004?

2 A. Yes, I did.

3 Q. And tell us what you can remember -- and  
4 again, you learned -- what you learned you learned  
5 from the local newspapers?

6 A. That's correct.

7 Q. Tell us what you learned about this meeting  
8 in August, 2004.

9 A. I believe that that meeting occurred early  
10 in August, around August 4th, and at that time the  
11 textbook was eventually approved. At first it was a  
12 four-four vote. As I understand it, that's not enough  
13 to have the book adopted. Board Member Angie Yingling  
14 asked for a reconsideration vote and the re-vote was  
15 five to three.

16 There was also some information there  
17 regarding Board Member Buckingham saying that he  
18 wouldn't allow -- or he didn't -- if he didn't get  
19 what he wanted as far as the curriculum or a book was  
20 concerned, that he didn't want to see this textbook  
21 being adopted. I think they even used the word  
22 "blackmail."

23 Q. And please take a moment to look at what's  
24 been marked as P682. Have you had a chance to look at  
25 that?

1 A. Yes, I have.

2 Q. And that's an article from the York Daily  
3 Record dated August the 4th of 2004 written by Joseph  
4 Maldonado. Isn't that correct?

5 A. That's correct.

6 Q. And you read that at the time?

7 A. Yes, I did.

8 Q. And that deals with this meeting of the  
9 Dover School Board in early August?

10 A. Yes, it does.

11 Q. And if you would please turn to what's been  
12 marked as P683. Take a moment to look at it. That's  
13 a -- have you had a chance to look at that?

14 A. Yes, I have.

15 Q. That's an article dated August the 3rd, 2004  
16 from the York Dispatch written by Heidi Bernhard-Bubb.  
17 Isn't that correct?

18 A. That's correct.

19 Q. And that also deals with this early August,  
20 2004 meeting of the school board. Correct?

21 A. Yes.

22 Q. And, again, you read -- this is another  
23 article that you read at the time?

24 A. Absolutely, yes.

25 Q. Now, did you learn about a board meeting in

1 early September?

2 A. Yes, there were two board meetings in  
3 September.

4 Q. What do you remember reading about the first  
5 school board --

6 A. This would have been the first time that it  
7 came to my attention that they were considering  
8 bringing in a supplemental textbook, the *Pandas*  
9 textbook. And it seemed to me that that was their  
10 answer to the dragonfly book, getting their equal  
11 balance.

12 I think the problem was, number one, using  
13 taxpayer money, they would have to go through the  
14 adoption process. They were trying to figure a way of  
15 getting the book in and also a way of getting it into  
16 the curriculum.

17 Q. Please take a moment to look at what's been  
18 marked as P679. Have you had a chance to look at  
19 that?

20 A. Yes, I have.

21 Q. That's an article dated September the 8th of  
22 2004 from the York Daily Record by Lauri Lebo. Isn't  
23 that correct?

24 A. That's correct.

25 Q. And that concerns a school board meeting

1 that was held just prior to that date?

2 A. Yes.

3 Q. And you read that at the time?

4 A. Yes, I did.

5 Q. And then if you would, please, look at  
6 what's been marked as P684.

7 A. Okay.

8 Q. Have you had a chance to look at that?

9 A. Sure.

10 Q. And that's an article dated September the  
11 8th, 2004, from the York Dispatch written by Heidi  
12 Bernhard-Bubb dealing with that same school board  
13 meeting in early September, 2004?

14 A. Yes, it is.

15 Q. And you read that at the time?

16 A. Yes, I did.

17 Q. Now, do you remember learning about a second  
18 meeting in September of 2004?

19 A. There was a second meeting in September.  
20 There wasn't a whole heck of a lot reported on that.  
21 Now, I did go on the board's site, and it looks like  
22 it was just a meeting, probably a business meeting  
23 that lasted 45 minutes. And I really didn't learn  
24 anything regarding this controversy.

25 Q. Did you read about any board meetings in

1 October of 2004?

2 A. There were two board meetings in October. I  
3 think October 4th might have been the first one.

4 Q. What do you recall learning from reading the  
5 newspaper about the October 4th, 2004 board meeting?

6 A. That was when it was announced that there  
7 had been an anonymous donation of 60 copies of *Pandas*  
8 *and People* and that that book would be used as a  
9 supplemental text within the classroom. Because it  
10 was not -- didn't go through the formal adoption  
11 process, it did not require board approval. They just  
12 were basically going to put it in the classroom.

13 The other thing that I remember there is I  
14 think that at that point Dr. Nilsen was questioned as  
15 to whether or not the teachers would be teaching  
16 intelligent design or instructed to teach intelligent  
17 design, and I think his answer was that they weren't  
18 going to be instructed to teach intelligent design,  
19 but that if they did, that would be okay. I'm not  
20 sure exactly how the phrase went.

21 Q. Please take a moment to look at what's been  
22 marked as P685.

23 THE COURT: While he's doing that,  
24 Mr. Harvey, by no means do I want to hurry you through  
25 this. If you think that you can finish your direct by

1 going a little past 4:30, we can do that. Otherwise,  
2 wherever you want to -- if you've got measurably more,  
3 I would say anytime you want to find an appropriate  
4 break point, we can do that and pick up with this  
5 witness on Friday. Your call.

6 MR. HARVEY: Thank you, Your Honor. Let me  
7 just confer with them.

8 My co-counsel reminds me that we're going to  
9 have an expert testifying on Friday morning and that  
10 we want to make sure that we have plenty of time for  
11 his cross-examination so that he can leave that day,  
12 so we'd like to press on as long as the Court would  
13 permit us to press. If we could go to quarter of  
14 5:00 --

15 THE COURT: I don't have a problem with  
16 that. Defense counsel have any problem?

17 MR. GILLEN: We'll hang in there, Your  
18 Honor. The cross, I imagine, would be very short  
19 anyway.

20 THE COURT: Well, let's do the best we can.  
21 We'll go until 4:45, in any event. We'll see how far  
22 we get.

23 BY MR. HARVEY:

24 Q. Have you had a chance to look at what's been  
25 marked as P685?

1 A. Yes, yes.

2 Q. And that is an article that was in the York  
3 Daily Record Sunday News on October the 5th of 2004  
4 written by Joseph Maldonado, isn't it?

5 A. That's correct.

6 Q. And you read it at the time?

7 A. Yes, I did.

8 Q. And that was the source of your information  
9 for the meeting on October the 4th?

10 A. That's correct.

11 Q. Now, you said that there were two meetings  
12 in October. Do you recall the meeting -- that there  
13 was a meeting on October the 18th?

14 A. Yes, October the 18th was where the board  
15 adopted the curriculum change to the ninth-grade  
16 biology in the area -- well, the gaps and problems and  
17 added intelligent design to their curriculum.

18 Q. And, again, this is something you learned  
19 just from reading the paper?

20 A. Yes.

21 Q. Please take a moment to look at what's been  
22 marked as P678.

23 A. Okay.

24 Q. You've had a chance to look at that?

25 A. Yes, I have.



1 Q. And P678 is an article that was written by  
2 Joseph Maldonado in the York Daily Record Sunday News  
3 on October the 19th of 2004, isn't it?

4 A. Yes.

5 Q. And you read that at the time?

6 A. Yes, I did.

7 Q. And that was the source for your information  
8 about the -- what happened at the October 18th  
9 meeting?

10 A. That's correct.

11 Q. And if you would also please look at P686.

12 A. Okay.

13 Q. That's another article by Mr. Maldonado,  
14 except this one is dated October the 20th, 2004, and  
15 this one also says it's from the York Daily Record  
16 Sunday News. Isn't that correct?

17 A. That's correct.

18 Q. And it's a different article reporting on  
19 the same meeting?

20 A. That's correct.

21 Q. And you read that at the time?

22 A. Yes, I did.

23 Q. Now, do you remember -- I don't want you to  
24 look at the article. You can close your book for a  
25 second. Do you remember reading about or learning

1 about comments that Board Member Heather Geesey made  
2 at that meeting on October the 18th?

3 A. I'm not sure if it was the October the 18th  
4 meeting, but I know that there was a question  
5 regarding whether or not -- I actually thought it was  
6 the next meeting, but whether, if the teachers sought  
7 to have legal counsel, Stock and Leader, the school  
8 board's lawyers, would they, in case the teachers got  
9 sued for teaching this, would they defend them. And  
10 Heather Geesey at that point said if they would ask  
11 for that, if they'd ask for help from Stock and  
12 Leader, they should be fired.

13 Q. "They" you mean the teachers?

14 A. Teachers.

15 Q. And, again, this is just what you read in  
16 the paper?

17 A. Yes. That one, being a teacher, stood out.

18 Q. Now, did you learn about a board meeting in  
19 early November?

20 A. Yes.

21 Q. And tell us what you can remember learning  
22 about that meeting.

23 A. Well, what I remember there is that Noel  
24 Weinrich, who was -- I believe at that point in time  
25 he had resigned from the board and his resignation was

1 effective. He was upset. He was concerned about who  
2 was going to -- if the school district got sued, who  
3 is going to cover his bills, you know, legal bills if  
4 he had any. And also he was, I think, upset because I  
5 think he had been -- he felt he had been assured by  
6 Dr. Nilsen that we were not going to be teaching --  
7 that the district was not going to be teaching  
8 intelligent design.

9 Q. And do you remember learning anything about  
10 tapes that had been made of the board meeting?

11 A. Okay, the tapes. Apparently the board tapes  
12 their meetings for use when they go back and try to  
13 put their minutes together. And there were people  
14 requesting the minutes from the October 18th meeting.  
15 Those tapes were denied to them.

16 There was some question about what the whole  
17 policy was regarding these tapes. I believe that  
18 Board Member Bonsell said that once the minutes had  
19 been typed and approved at the next board meeting,  
20 that these tapes were destroyed.

21 And I believe that they also said under the  
22 advice of their solicitor that -- because they were --  
23 there was the chance that they would be sued in the  
24 future because of what had happened at the  
25 October 18th meeting, that they were told that they

1 should be destroyed, or at least not turn them over to  
2 the public.

3 Q. Please take a moment to look at what's been  
4 marked as P669.

5 A. Okay.

6 Q. Have you had a chance to look at that?

7 A. Yes, I have.

8 Q. That's another article by the ever-present  
9 Mr. Joseph Maldonado, isn't it?

10 A. Yes.

11 Q. And it's dated November the 2nd, 2004, and  
12 it's for the York Daily Record Sunday News. Is that  
13 right?

14 A. If we're looking at -- which number, 669?

15 Q. Yes.

16 A. 669 is dated November 2nd, 2004. I thought  
17 you said November 4th.

18 Q. I'm sorry if I misspoke.

19 A. Okay.

20 Q. So it's an article dated November the 2nd of  
21 2004 for the York Daily Record Sunday News by  
22 Mr. Maldonado?

23 A. Correct.

24 Q. And it's reporting on the school board  
25 meeting that was held actually on November the 1st?

1 A. Right.

2 Q. And you read this at the time?

3 A. Yes, I did.

4 Q. And if you would also please look at what's  
5 been marked as P687. And that's another article you  
6 read at the time?

7 A. Yes, I definitely did.

8 Q. And that's by Heidi Bernhard-Bubb, and it's  
9 dated November the 2nd, 2004, from the York Dispatch.  
10 Isn't that correct?

11 A. That's correct.

12 Q. And it's also reporting on the November 1st  
13 meeting?

14 A. Yes, it is.

15 Q. Now, in addition to reading all these  
16 newspaper articles that we've just looked at, did you  
17 review material on the Dover School Board Web site?

18 A. Yes, I did.

19 Q. Please take a moment to look at what's been  
20 marked as P104. What is P104?

21 A. P104 was the -- they call it the board press  
22 release. My question all along had been, now we have  
23 this curriculum, how are they going to implement it.  
24 And I believe this is their policy that they're  
25 telling the public how they're going to implement

1 this. They're going to read a statement. This  
2 appeared on the Web site on Friday, November 19th.

3 Q. And did you read it on or around that date?

4 A. That day.

5 Q. And what was your reaction to it?

6 A. All along I thought this would just go away.

7 I don't know how -- that's the only thing I can say.

8 And, you know, as a teacher, there are things in the

9 curriculum, you try to cover them. The question is

10 how they're going to be implemented. This showed me

11 how this curriculum was going to -- that it was going

12 to be implemented, how it was going to be implemented.

13 And this, I would have to say, was the thing that put

14 me over the edge.

15 Q. And did you do anything after reading this?

16 A. I called the ACLU the following Monday.

17 Q. Did you contact Paula Knudsen from the ACLU?

18 A. Well, what I did is, I really -- you know, I

19 had heard the ACLU being bantered around in the

20 newspapers at that point in time. I called -- I

21 believe they have a hotline in Philadelphia. And I

22 called that, and I just basically said I'm a parent

23 who has a student in Dover School District, and I feel

24 right now that possibly some of my rights and my

25 daughter's rights might be being violated. I was

1 looking for somewhere to turn. And that was  
2 basically -- you know, with contact information, that  
3 was what I did that day.

4 Q. Now, after reading these articles and  
5 reading this -- what was posted on the Web site, did  
6 you begin to attend school board meetings?

7 A. I did not -- well, yes, because the next  
8 school board meeting would have been December 1st.  
9 Yes, I did.

10 Q. And that was your first school board  
11 meeting?

12 A. Yes, it was.

13 Q. And it was because of these issues that you  
14 attended that meeting?

15 A. Yes. I felt it was time to get involved.

16 Q. Now, I'd like you to take a look at what's  
17 been marked as P127. We've looked at this in court  
18 several times. Do you recognize it as the newsletter  
19 that was published in February of 2005 by the school  
20 board?

21 A. Yes, I do.

22 Q. And were you ever at a school board meeting  
23 where this was discussed prior to it being published?

24 A. I wouldn't say it was discussed.

25 Q. Tell us what you can remember being

1 mentioned about it.

2 A. Much to my wife's chagrin, I went to the  
3 school board meeting on February 14th, Valentine's  
4 Day. And it was not on the agenda. You're able to  
5 pull up the agenda to the school board meetings on  
6 their Web site, and it was not on that agenda.  
7 Additionally, they also publish agendas and have those  
8 there for you to pick up at the meeting. There was  
9 nothing on there regarding the approval of this  
10 newsletter.

11 There's a section in -- when they work  
12 through their agenda, and I'm not sure exactly what  
13 it's called, but it's president's message or  
14 president's communications. And at that time Board  
15 Member Eric Riedel made a motion to send out a  
16 district newsletter in addition to the one they were  
17 already sending out regarding the biology curriculum  
18 update. It was seconded by Board Member Buckingham,  
19 and it passed seven-zero. There are nine members on  
20 the school board. Two were absent.

21 Q. Was there any discussion among the board  
22 about it?

23 A. No. This went quick.

24 Q. Now, after that, did you receive this -- as  
25 a result of that, did you receive this newsletter?



1 A. Yes.

2 Q. And can you tell us whether -- did you read  
3 it at the time?

4 A. Yes.

5 Q. Now, I'd like you to tell us, what was your  
6 reaction as a schoolteacher -- and I'm going to take  
7 you through parts of it. There are some frequently  
8 asked questions, and I'd like you to look at the first  
9 frequently asked question and tell us what was your  
10 reaction as a schoolteacher to that statement.

11 A. A small minority of parents. I don't care  
12 if it's one parent objecting to this, but the group of  
13 folks that I'm involved with are plaintiffs. We were  
14 being put into this small group that was making  
15 problems and trouble for the school district.

16 Q. And take a look at the second frequently  
17 asked question. Did you have a reaction to that  
18 statement there?

19 A. I would completely disagree with this. In  
20 my opinion, intelligent design is religion in  
21 disguise. I use the word "camouflage."

22 Q. And that was your reaction at the time?

23 A. Oh, yes.

24 Q. Now, take a look at -- it says that it  
25 involves science versus science. Did you have a

1 reaction to that at the time?

2 A. Well, it's not science. I mean, intelligent  
3 design is not science. We've heard the experts here.  
4 It's not science. It doesn't reach the level of  
5 science.

6 Q. Please take a look at the next frequently  
7 asked question when it asks about what is the theory  
8 of evolution, and I'd like to know if you had a  
9 reaction to that at the time.

10 A. I sure did. Am I allowed to read this?

11 Q. Sure.

12 A. (Reading:) The word "evolution" has several  
13 meanings, and those supporting Darwin's theory of  
14 evolution use that confusion in definition to their  
15 advantage. So we're going to put evolution over on  
16 people, we're going to employ double-talk. We say one  
17 thing, we say another thing. That's not what  
18 scientists do.

19 Q. So you understood the school board to say  
20 that science teachers engage in double-talk when they  
21 talk about evolution?

22 A. Yes.

23 Q. Please take a moment to look at the next  
24 frequently asked question, the one that says, What is  
25 the theory of intelligent design?

1           A.    Right, right, I was just looking it over.  
2   My problem is, again, it recognizes an intelligent  
3   designer, an intelligent cause.  Again, it doesn't  
4   reach the level of science.

5           Q.    And that was your reaction at the time?

6           A.    Yes.

7           Q.    And please take a look at the next  
8   frequently asked question.  Well, actually, within  
9   that, what we were just looking at, it says, In simple  
10  terms, on a molecular level, scientists have  
11  discovered a purposeful arrangement of parts which  
12  cannot be explained by Darwin's theory.  Did you have  
13  a reaction to that statement at the time?

14          A.    Well, the word "purposeful."  Again, I think  
15  we're going back to the whole concept of design and  
16  then someone had a purpose and that would be God.

17          Q.    The next frequently asked question says, Are  
18  Dover students taught the theory of intelligent  
19  design?  And there's a response there.  Do you see  
20  that?

21          A.    This is the great one-minute statement.  
22  We're making a one-minute statement, but we're not  
23  teaching.  I've been teaching for 29 years.  
24  Everything that I say in that classroom is teaching.  
25  I carry a fair amount of authority and credibility

1 within that.

2 If I say that one NFL football -- and I'm  
3 trying to avoid sports analogies here. But if I say  
4 one NFL football team is better than another, I'm  
5 going to tell you that 80 percent of my kids are going  
6 to go back to their parents and say, this is what  
7 Mr. Stough said, and this is how it is. I don't care  
8 if it's a minute, I don't care if it's ten seconds,  
9 it's teaching.

10 Q. And then there's another frequently asked  
11 question that said, Are there religious implications  
12 to the theory of ID? And there's a response. Can you  
13 tell us if you had a reaction to that question and  
14 response at the time?

15 A. No more so than religious implications of  
16 Darwin's theory. There are no religious implications  
17 of the theory of evolution. They like to characterize  
18 evolution as being dogmatic, as being a religion.  
19 It's not. And so, again, they're just saying this  
20 is -- you know, evolution is a religion, too. It's  
21 not.

22 Q. And then, finally, under the right-hand  
23 corner there's something that says, quotables, and  
24 then there's a quotation from somebody named Anthony  
25 Flew, and it refers to him as a world-famous atheist.

1 Do you recall having a reaction to that quotation from  
2 Mr. Flew at the time?

3 A. Sure.

4 Q. Please tell us what was your reaction.

5 A. Well, what they're doing -- from what I  
6 understand the story with Anthony Flew is, he was an  
7 atheist, and they equate that point in time of his  
8 life with his, you know, adhering to or accepting the  
9 theory of evolution.

10 Then he moved towards the intelligent design  
11 concept and at the same time was finding religion, was  
12 no longer an atheist. There are a lot of messages  
13 there. Atheism is bad. Religion is good. And, you  
14 know, I had to laugh at how many people want to be  
15 world-famous atheists.

16 MR. HARVEY: Your Honor, that's all the  
17 questions I have on that exhibit, but I do have a few  
18 other exhibits, and we're surely not going to get it  
19 done in the next few minutes.

20 THE COURT: So you want to continue your  
21 direct?

22 MR. HARVEY: Yes, Your Honor.

23 THE COURT: All right. And certainly we're  
24 not going to get cross in today, so we'll adjourn for  
25 the day. We'll be in recess until Friday morning at

1 9:00 a.m. Now, you have an expert who is going to  
2 follow this witness. Is that correct?

3 MR. HARVEY: Yes, Your Honor.

4 THE COURT: Do you think that's going to  
5 take the rest of the day on Friday?

6 MR. HARVEY: I believe so.

7 THE COURT: Do we need to start a little  
8 earlier on Friday to get that in?

9 MR. HARVEY: Happy to do so.

10 THE COURT: If you don't think we do --

11 MR. ROTHSCHILD: I think it's a good idea to  
12 be safe.

13 THE COURT: Why don't we start at 8:45 just  
14 to be safe and give you a little extra time. And  
15 certainly I'd give the defendants the same courtesy  
16 during your case-in-chief. I just want to keep this  
17 moving. That will give us a little bit of a cushion  
18 at the outset so we don't get lost on this witness on  
19 Friday morning.

20 So we will reconvene at 8:45. That will be  
21 our starting time on Friday morning, and we'll go as  
22 long as we have to. I would rather not go beyond  
23 4:30, actually, on Friday. We have a full week. I  
24 think we're in session every day or parts of every day  
25 next week, so we'll try to wrap it up at least by

1 4:30. But that will give us a cushion if we start at  
2 8:45. So we'll recess until 8:45 on Friday. Wish you  
3 all a pleasant good evening. We'll see you then.

4 MR. HARVEY: Thank you, Your Honor.

5 (Whereupon, the proceedings were adjourned.)  
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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this copy is a correct transcript of the same.

Dated in Harrisburg, Pennsylvania, this 12th day of October, 2005.

**/s/ Lori A. Shuey**  
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