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

TAMMY J. KITZMILLER; BRYAN REHM *
CHRISTY REHM; DEBORAH F. FENIMORE;*
JOEL A. LIEB; STEVEN STOUGH; BETH *
A. EVELAND; CYNTHIA SNEATH; JULIE*
SMITH; ARALENE D. CALLAHAN *
("BARRIE"); FREDERICK B. CALLAHAN,* CIVIL ACTION
Plaintiffs, *
* NO. 4:04-CV-2688
V. *
*
DOVER AREA SCHOOL DISTRICT; *
DOVER AREA SCHOOL DISTRICT BOARD OF*
DIRECTORS, *
Defendants. *

****

VIDEO DEPOSITION OF JON BUELL

VOLUME 1

****

ANSWERS AND DEPOSITION OF JON BUELL, produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 8th day of July, 2005, A.D., beginning at 8:51 a.m., before Brandy Cooper, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Mateer & Shaffer, located at 325 N. St. Paul, Suite 1300, Dallas, Texas, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

A P P E A R A N C E S

FOR THE PLAINTIFF:

ALFRED WILCOX
Pepper Hamilton, L.L.P.
3000 Two Logan Square
18th & Arch Streets
Philadelphia, Pennsylvania 19103
(215) 981-4000
(215) 981-4750 (Fax)

FOR THE DEFENDANT:

RICHARD THOMPSON (Via Telephone)
JULIE SHOTZBARGER (Via Telephone)
Thomas More Law Center
24 Frank Lloyd Wright Drive, Lobby D
Ann Arbor, Michigan 48105
(734) 827-2001
(734) 930-7160 (Fax)

FOR MR. BUELL:

JEFFREY C. MATEER
Mateer & Shaffer, L.L.P.
325 N. St. Paul Street, Suite 1300
Dallas, Texas 75201
(214) 720-9900
(214) 720-9910 (Fax)

DENNIS E. BOYLE
Clymer & Musser, P.C.
23 North Line Street
Lancaster, Pennsylvania 17602
(717) 299-7101
(717) 299-5115 (Fax)

ALSO PRESENT:

SEAN APPLEGATE - Videographer

WITNESS' ADDRESS:

Not Given

I N D E X

Appearances . . . . . Page 2
Exhibit Index . . . . . Page 4
Stipulations . . . . . Page 7
Examination by Mr. Wilcox . . . . . Page 8
Examination by Mr. Thompson . . . . . Page 130
Further Examination by Mr. Wilcox . . . . . Page 136
Signature and Corrections . . . . . Page 137
Reporter's Certificate . . . . . Page 138

E X H I B I T L I S T

No.	Description	Page Mrk'd	Page Ident.
1	Creation V. Evolution Article	18	18
2	Council of Academic & Educational Advisors	27	27
3	Articles of Incorporation of Foundation For Thought And Ethics	29	29
4	2003-990 Tax Form	33	33
5	Foundation For Thought And Ethics; What is Our Mission?	40	40
6	Internet Document Regarding Foundation For Thought And Ethics	41	41
7	Letter from Foundation For Thought And Ethics Counsel; 2-13-95	46	46
8	Summary Chapter	56	57
9	Biology & Origins Document	64	65
10	Biology & Origins Document	71	72
11	A Word to the Teacher	73	73
12	Table of Contents & Introduction	77	77
13	Compilation Document Starting at Bates No. 5786-5803	80	80
14	Features of Treatment & Style	82	82
15	Publication Proposal by Foundation For Thought And Ethics	82	82
16	Short List of Key Revisions in Second Edition		

	Of Pandas	86	86
17	Internet Printout	86	86
18	1995 Issue of a Moody Publication Regarding Challenging Darwin's	89	89
19	Haughton Publishing Company; 8-21-90	95	95
20	Haughton Publishing Company; 2-2-91	95	95
21	Haughton Publishing Company; 8-9-93	104	105
22	Broaden Science Curriculum Article	104	105
23	A Legal Scrutiny of Of Pandas and People	110	110
24	Professional Responses of Five Strata of Legal & Educational Specialists to Edwards V. Aguillard	111	111
25	Creation Science Printout	114	114
26	Letter to Mr. Bartlett from Foundation For Thought And Ethics; 1-30-87	115	115
27	Efforts to Access Market for Of Pandas and People	116	116
28	Letter to Mr. Buell; 7-22-87	118	---
29	Pandas Marketing Plan/Activity/Results	118	---
30	Prospectus for Biology & Origins	118	---
31	Marketing Plans for 1995	118	---
32	1995 Marketing Plans for Of Pandas and People	118	---
33	Letter from Mr. Buell to Ms Kremer; 9-10-02	118	---
34	Letter from Mr. Buell; 5-16-88	118	---
35	Letter from Mr. Buell; 9-20-95	118	---

36	Letter from Mr. Buell; 3-28-91	118	---
37	Letter from Mr. Buell; 10-21-88	118	---
38	Letter from Mr. Buell; 9-18-89	118	---
39	Letter from Mr. Buell; 3-8-95	118	---
40	Letter from Mr. Buell; 9-20-99	118	---
41	Letter from Mr. Buell	118	---
42	Letter from Mr. Buell; 12-11-91	118	---

P R O C E E D I N G S

THE VIDEOGRAPHER: This is the beginning of Tape No. 1 in the videotaped deposition of Jon Buell, taken in the matter of Case No. 4:04-CV-2688, Tammy Kitzmiller, et al., versus Dover Area School District, et al., to be heard in the U.S. District Court for the Middle District of Pennsylvania. Today's date is June 8th, 2005 --

MR. WILCOX: July 8th.

THE VIDEOGRAPHER: Sorry, July 8th. The time is 8:51 a.m. If counsel present will please identify themselves and state any agreements or stipulations, after which the court reporter will please swear in the witness.

MR. WILCOX: This is Alfred Wilcox representing the Plaintiffs.

MR. MATEER: Jeff Mateer and Dennis Boyle for the witness, Jon Buell.

MR. WILCOX: And participating by phone is Richard Thompson of the Thompson More Law Center. Are you there, Richard?

MR. THOMPSON: Yes, I am and Julie Shotzbarger.

MR. WILCOX: And the agreement among counsel is that the deposition is being taken in accordance with the Federal Rules of Civil Procedure. The objections, except as to form, are reserved until the time of trial. Does the witness wish to reserve his right to read and sign the transcript?

MR. MATEER: Yes.

MR. WILCOX: May we have the witness sworn.

THE REPORTER: Could we take one second? My computer's messing up.

MR. WILCOX: Sure.

THE REPORTER: I'm sorry. Can we go off the record?

THE VIDEOGRAPHER: We are off the record. The time is 8:52 a.m.

(Break was taken.)

THE VIDEOGRAPHER: We are on the record. The time is 8:55 a.m.

JON BUELL,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. WILCOX:

Q. Good morning, Mr. Buell.

A. Good morning.

Q. My name is Alfred Wilcox. I'm representing the Plaintiffs in the case of Kitzmiller, et al., versus Dover Area School District, et al. This is a deposition. As the court reporter has already explained to you, this is as though you were right in court testifying in front of a judge or a judge and jury. So you want to make sure that your answers, as you give them, are what you intend them to be.

A. Yes.

Q. And towards that end, I wanted to just tell you right out that you're probably more familiar with a lot of what we'll be talking about than I am. So if at any time, my questions don't make sense to you, don't hesitate to call that to my attention and I'll try to do better.

A. Thank you.

Q. If at any time, you would like to take a break, personal comfort or to clear your head and take a walk, just let us know and we can accommodate that.

Let me start off -- out just by asking: Are you aware of any medication you are taking or medical condition you have that would interfere or impede in any way your ability to understand my questions or formulate and express your answers?

A. No.

Q. Okay. Thank you. Sir, could you tell us a little bit about yourself? When were you born?

A. I was born in 1939, December 20.

Q. And that makes you about 66?

A. Makes me 65.

Q. 65. Well, that's about 66. Did you go to college?

A. Yes, I did, University of Miami.

Q. In Florida?

A. Yes.

Q. And did you graduate?

A. Yes, I did.

Q. What year was that?

A. That was 1961.

Q. After graduation, did you do any postgraduate studies?

A. No.

Q. What was your major in college?

A. It was communication arts.

Q. And did you have any college level science courses while you were going through college?

A. Yes, but I don't remember that it -- I had college level biology. I don't remember if I had others.

Q. Okay. After graduating from the University of Miami, did you take work some place?

A. Yes.

Q. What did you do?

A. I joined the staff of Campus Crusade for Christ.

Q. And what were your job responsibilities on the staff of Campus Crusade for Christ?

A. For the first four years, I was either -- either a trainee or the campus director at the University of Miami. And then for the --

Q. Let me interrupt. As trainee or campus director, what were your duties?

A. Planning, meeting with students, conducting meetings, directing a small staff.

Q. Was this a paid position?
A. I'm sorry?
Q. Was this a paid position?
A. Yes.
Q. Not paid well, I assume, but paid?
A. Right, right.
Q. I'm sorry for the interruption.
A. I'm sorry, let me clarify. Campus Crusade staff are paid, but they are responsible for raising their support.
Q. And did you raise your support from students at the university or from --
A. No.
Q. -- others beyond that community?
A. Others beyond that community.
Q. After those four years, what was your next position with the Campus Crusade?
A. Regional -- I'm sorry, district director in Austin.
Q. And how long were you in that position?
A. I was in that position three years.
Q. That takes us up to the late '60s?
A. Right, right.
Q. And what was your next position after that?
A. It was regional director for the southeast region.
Q. In each of those positions, were you also responsible for raising your own support?

A. Yes.

Q. How long were you the regional director for the southeast region?

A. Four years.

Q. And after that?

A. After that, I left and --

Q. What year was that?

A. That was in 1972. And I helped to establish an organization called the Probe Ministries.

Q. And what was the mission, as it were, of Probe Ministries?

A. Two-fold; one was to publish books and the other was to speak in university classrooms.

Q. Publish books on any and all subjects or on particular subjects?

A. Publish books on specific subjects, although quite a large number.

Q. Was there a religious focus to the books?

A. Yes.

Q. Could you amplify that a little bit for us? Was this theology? Was it history of religion? Was it religion in the world today?

A. It was not history religion -- it was not theology. It was on academic topics that -- upon which religion impinges; for example, the nature of man.

Q. Okay. As being the product of an Intelligent Being or the product of random evolution?

A. Yes, but -- but when you address that, you would -- you would talk about the nature of man. The Essence of Human Nature is the title of a book --

Q. Okay.

A. -- that we did.

Q. Did you participate in writing that book?

A. No, I didn't.

Q. Did you participate in editing that book?

A. Yes.

Q. And how long were you with Probe Ministries?

A. I was with Probe eight years.

Q. That would take us up to 1980, and is that when you founded the Foundation for Thought and --

A. It is.

Q. -- Ethics?

A. It is.

Q. Were you the prime moving force behind the foundation of the Foundation for Thought and Ethics?

A. Yes.

Q. And if I refer to that as FTE, will that be satisfactory to you?

A. Absolutely.

Q. Okay. According to a piece of paper titled, Biographical

Information on Authors and Developers of Pandas and People, which was in papers that your counsel was good enough to supply to us -- and I'm sorry, my copy does not have the Bates stamp number on it for some reason. But according to that piece of paper, it describes you as founding editor of the Christian Free University curriculum, a Probe/Zondervan Z-O-N-D-E-R-V-A-N, paperback series.

Is that the Probe Ministries books that you referred to?

A. Yes, it is.

Q. And it also says that at the Foundation, FTE, your responsibilities have included ghost writing the second chapter of The Mystery of Life's Origin. Is that a true statement?

A. That's true.

Q. Why did you ghostwrite it rather than have your name appear as a coauthor?

A. Because I wrote it under the supervision of Charles Thaxton, and I'm not credentialed in -- so my name appearing as an author would -- would not give an accurate impression, nor do I deserve to be listed as an author.

Q. Do you deserve to be listed as a ghost writer?

A. No.

Q. It also says in this piece of paper that you, quote, Completed the Stanford publishing course at Stanford University in 1985. Was that kind of a how to get books published course?

A. You know, I -- I'm sorry. That -- I -- I've attended

three and they run together in my mind, but certainly that topic has been covered in those three courses -- three levels.

Q. And when we say "that topic," are we talking about the mechanics of getting a book published, getting it printed, getting the graphics and artwork and text all together, or is it some other subject?

A. Possibly minimally about the mechanics of getting it published.

Q. Okay. What's it primarily deal with?

A. Are you asking about the 1985 course?

Q. Yes. But if you can't distinguish it, I'm perfectly content if you just tell us that and then go on to say what all of these three courses together informed you about.

A. I would rather do that. All three courses together informed us about launching a new release, putting a book on the market, all of the bibliographic work associated with publication, ISBN, Library of Congress, etc., etc., announcing it to the trade -- announcing your book to the trade, marketing, electronic publishing.

Q. So it's what a person, whether a businessperson or not, would need to know in order to get a book from written to out there in the market?

A. Yes.

Q. Okay. And this piece of paper also says that you -- it says, Presently serves on a religious task force of the Dallas

Independent School District. I don't know the date of this piece of paper, so I don't know what time period that's referring to. Are you presently on the religious task force?

A. It's the Religious Community Task Force of the Dallas Independent School District, and I served on it for approximately 15 years. I'm not now a member of it.

Q. When did you withdraw or resign?

A. Probably close to or just following the time of my wife's death in -- in '01.

Q. And was that a causative factor?

A. Yes.

Q. Sorry to hear about that.

A. Thank you.

Q. There is a description as well -- oh, I'm sorry. I didn't finish up on that.

What was the function or purpose of the -- Religious Community Task Force, is that the correct name of it?

A. Right. I would say the two distinctive purposes were, one, to foster rapport and goodwill among diverse groups. It had originally been established just after the integration ruling in the schools. And it had --

Q. Are you referring to Edwards v. Aguillard? Oh, no, I'm sorry --

A. No.

Q. -- Brown v. Board of Education?

A. Yes. And then secondly, it -- it came to function as an advisory group to school officials and teachers, and we did a guidebook for handling religious issues, religious holidays, etc.

Q. Okay. Now, let's switch gears.

A. All right.

Q. Another individual identified in this description of the biographical information on authors and developers is Charles B. Thaxton, and you've referred to him already today.

A. Yes.

Q. Among other things, this says -- this says, He is a fellow of the ASA. Do you know what that organization is?

A. The American Scientific Affiliation.

Q. And what is the nature of that organization?

A. It's an organization that includes members of credentialed scientists -- in order to be a full member you have to be a PhD level scientist in one of the sciences. It is very broadly representative of the sciences.

Q. And is the membership of that organization primarily composed of Christian scientists?

A. Yes, yes.

Q. Is it primarily composed of evangelical Christian scientists?

A. I don't know that.

Q. Dr. Thaxton is described in another document that was given to us. And this one is Bates stamped FTE 003541.

MR. WILCOX: And I'd like to have this marked as Deposition Exhibit 1, Buell.

(Exhibit No. 1 was marked.)

Q. (BY MR. WILCOX) According to Deposition Exhibit 1 -- and by the way, I should ask: Have you seen this before?

A. I have.

Q. Did you participate in its preparation?

A. Yes.

Q. This describes Dr. Thaxton as a person who, quote -- well, start that again.

This describes Dr. Thaxton's value or contribution as follows: Quote, The perspective he presents is much like giving his audiences a lens through which to view the creation/evolution issue. Is it your understanding that Dr. Thaxton, as of the time this document was created, focused on the relationship between evolution and creation -- creationism?

MR. MATEER: Object to form.

A. Will you restate the question?

Q. (BY MR. WILCOX) Sure.

A. State it in a different way.

Q. There was a period in the history of the debate between religious and secular forces in America where there were contending groups, creationists on one side and evolutionary advocates on another side. Do you recall that period?

A. I don't think I would know from your language what period

you're speaking of.

Q. Do you know what Darwinian -- or neo-Darwinian evolution refers to?

A. Yes.

Q. Let's call that evolution.

A. All right.

Q. Are you familiar with the theory that life and all living things were created by a creator rather than evolving through purposeless nature?

A. I'm familiar with that viewpoint.

Q. Let's call that creationism. Is that satisfactory to you, or is that confusing?

A. I would do that for purposes of this, but I think that that's not correct if you compare it with the National Academy of Sciences or the U.S. Supreme Court; both of them adopt a very specialized definition of creation science.

Q. You're referring to the Genesis version?

A. I'm referring to what the National Academy of Sciences has described in their -- I think it was 1985 -- statement on the issue, which defined creation science as a -- a supernatural creation of all living things, including man, as appealing to catastrophism for the structure of the earth and a creation -- recent in time, somewhere between 6 and 10,000 years.

So when I refer to creation science or creationism, I accept this definition since the court in McLain did and it

passed it to Edwards v. Aguillard.

Q. Although, you are familiar with the view that there are other creationists who wouldn't be of the young earth creationist school, but -- but would be of the old earth creationist school?

A. Yes.

Q. And you're also familiar with the view of agnostic creationists, are you not?

A. Sure.

Q. What those views all have in common is that life itself is the product of the act of a creator; isn't that true?

A. Would you -- would you restate that for me?

Q. What part of it don't you understand, the reference to a creator or the reference to act or the reference to life?

A. The reference to a creator.

Q. The view that life is the product of the intelligent action of a force that is presently not knowable to us.

A. And the question about that -- I understood what you just said -- and the question about that is?

Q. What all of the three different schools of creationism, that we referred to just a minute ago, have in common is the view that life was the product of the intelligent or purposeful action of a force that is not directly knowable to us?

A. No. I don't think that all three of those groups hold that in common.

Q. Okay. And why -- would you explain that for us?

A. Well, I think that creation scientists hold that -- I mean, I accept the definition of the National Academy of Scientists. I think it's adequate and I think it's accurate. And so it -- creation scientists don't -- they don't claim that they don't know that source. And that's a fundamental divide.

Q. All right. If somebody said, I think God created the world and everything in it, but I don't know when he did it and I don't know how he did it. I don't know if the story in Genesis is true or not, would you still characterize that person as a creationist?

A. I would call that person an adherent to creation.

Q. Excuse me?

A. An adherent, a person who believes in creation.

Q. And is that because the person represents that he believes creation came from God? Is that the distinguishing element of it?

A. Yes. And if I may clarify, creation is a very old term; existed long before creationism or creation science.

Q. Sure. According to the Exhibit 1, quote, Dr. Thaxton lectures give the philosophical, historical and scientific rationale for the validity of creation.

In that context, are we talking about creation as being the creation of life and living things by God?

A. Yes.

Q. Okay. And it continues, He addresses these types of

questions, bullet point one: Should people be concerned about the creation/evolution issue?

What do you understand to be the creation/evolution issue?

A. Well, at that time, I think that the creation/evolution issue was a fairly stripped down debate in our culture about major worldviews of naturalism, naturalistic origins of living things, versus creation broadly understood as we just discussed.

Q. To explore that just a little bit further --

A. Uh-huh.

Q. -- would you mean by "naturalism," the purposeless evolution of life as it is today?

MR. MATEER: I'm going to object to form.

Q. (BY MR. WILCOX) Life as we see it today? I don't want to assume anything about what it ultimately is in a theological sense.

A. I would appreciate it if you would restate it. I'm not -- not certain I understand your question.

Q. You're describing a dichotomy between creation and evolution, and you referred to naturalism versus creation. Are you signifying that under one side of the culture war are people who are of the view that there are no evident purposes in the evolution of life and that it occurred naturally or randomly without design, and on the other side, the view that life is the result of an Intelligent Creator who had a purpose in creating life?

A. I would not say that -- that that describes what's referred to here, no.

Q. Okay.

A. I would say that naturalism refers to -- you accurately described naturalism. But I would say that since this was written, there's been a clarification of approaches to creation and I'm not sure that anybody well informed in one of those approaches would use the term that you just did.

Q. Which term is that?

A. Intelligent creation.

Q. Might they use the term "intelligent design"?

A. Yes. And -- and -- and if -- if I can further say, that would be true today. That was not true when this was written.

Q. "This," you're referring to Exhibit 1?

A. Yes.

Q. And when was Exhibit 1 written, approximately?

A. It was written in the very early '80s, approximately.

Q. The Exhibit 1 continues with a question that Dr. Thaxton addresses, described as, quote, Should both creation and evolution be taught in the public schools?

A. Uh-huh.

Q. How would Dr. Thaxton answer that question, do you know?

MR. MATEER: Object to form.

A. He wouldn't answer it without defining the issues -- the terms, excuse me.

Q. (BY MR. WILCOX) And having defined the terms in a way that's satisfactory to you and to him, how would he answer it?

MR. MATEER: Object to form.

MR. WILCOX: Because, I should ask?

MR. MATEER: Because you're asking him to speculate about what someone would -- a question he would answer. You're going to take his deposition, I think, in about two weeks. You could probably ask him that question. He'd probably be better equipped to answer how he would answer a question rather than this witness.

Q. (BY MR. WILCOX) How long have you worked with Dr. Thaxton, sir?

A. I worked with Dr. Thaxton from approximately 1975 to 1986, I believe.

Q. And during that period, he worked on the book Pandas and People and its predecessor; is that right?

A. Yes, among other things.

Q. And you worked on that book with him?

A. Yes.

Q. He would draft something and you would edit and revise, and you'd discuss the reasons for these changes, correct?

A. He would -- he would draft. We would circulate broadly among scientists, both in -- in fundamental agreement and in disagreement. And he would take the readers' comments and work on it some more. I'm -- I'm referring now to his part in the

field-test edition of Pandas. And Pandas -- obviously, the authors provide the nuts and bolts -- or the facts of science, the facts of biological science and origin of life.

Q. But working with Mr. Thaxton for that length of time on this very subject, did you feel that you had a good understanding of his view on the subject of creation versus evolution and whether creation and evolution should be taught in the public schools?

A. Yeah, I -- I feel that I have a good understanding. I'm not certain that I'm able to articulate it in a way that would be acceptable to him, but I feel that I have an understanding.

Q. And is it your understanding that Dr. Thaxton was of the view that both creation and evolution should be taught in the public schools?

A. No. I think that his -- his view was that intelligent design should be taught in public schools.

Q. Along with evolution?

A. Oh, yes.

Q. Okay. Exhibit 1 continues on the second page, and I'm quoting, According to Jon Buell, founder and president of the Foundation, quote, no newcomer to the evolution -- excuse me -- no newcomer to the evolution/creation debate, Dr. Thaxton has defended creation in hundreds of college classes and persuaded scientists and educators in Korea to include creation in the Korean school curriculum.

Is creation, as used there, limited to the

intelligent design?

A. I wouldn't be able to answer that.

Q. Okay.

A. I have no knowledge of --

Q. This is you -- this is you speaking?

A. This was me speaking a very long time ago.

Q. Okay.

A. I have not had contact with the Korean school system.

Q. Then it continues that Dr. Thaxton, quote, is also working on a high school biology textbook, which is sensitive to both the creation and evolution views of origins.

Is that a reference to the predecessor to Pandas?

A. Yes.

Q. You said you started working with Dr. Thaxton in 1975. That was while you were still at the Probe Ministries?

A. Yes, it was.

Q. Did he -- was he a coworker at Probe Ministries, or was he an author that you dealt with?

A. He was a coworker.

Q. Was Dr. Thaxton also a participant in Campus Crusade for Christ?

A. No -- not to my knowledge. I have no knowledge of his having any contact with Campus Crusade.

Q. The marketing team for Pandas included Paul Flowers; is that right?

A. No. Paul Flowers was the president of Flowers Marketing & Advertising, so we went to their firm for assistance.

Q. But he was not the individual there who assisted?

A. No, he wasn't.

Q. Who was the individual who assisted you?

A. Joe Yoder.

Q. Paul Flowers is identified as someone who represents, among other accounts, the account for Campus Crusade for Christ. Is that something that brought you in touch with him?

A. No.

Q. Just sheer coincidence?

A. Yes. In fact, I didn't know that.

Q. I have another document to mark. And again, I apologize, it does not have a Bates stamp. It is called, Council of Academic and Educational Advisors, Foundation for Thought and Ethics.

MR. WILCOX: And if we could mark that Exhibit 2, please.

(Exhibit No. 2 was marked.)

Q. (BY MR. WILCOX) Can you identify this document for us, sir?

A. Yes. This would be -- I would identify it like it's captioned. It is the Council and Academic Educational Advisors of FTE.

Q. I don't see a date on this. Could you tell us approximately what's the time period this represents?

A. Well, it's fairly complete. I don't know if this was a version in the late '80s or early '90s, probably within that span.

Q. Would it be correct that the unifying characteristic of the people listed here is that they are all Christians? Would that be one unifying characteristic?

A. I'm not certain. In some cases, I don't know that.

Q. In the instances where you do know that, do you know that they are Christians?

A. Yes. I -- would you restate that?

Q. As I understand what you're telling us, you can't swear that everybody on here is a Christian, but --

A. Right.

Q. -- of the people where you do know their religious persuasion, is it your understanding that they are Christian?

A. Let me look down the list. Yes.

Q. Is there anyone on there that you recognize as being an atheist?

A. No.

Q. We'll come back to this --

MR. WILCOX: Thank you.

Q. (BY MR. WILCOX) We'll come back to this again, but referring back to Exhibit 1 -- I should have asked you about this before -- it says, Describing the Foundation, quote, The Foundation is a nonprofit organization founded to promote balance in education through the free expression of fundamental values.

What are the fundamental values referred to in that description of the Foundation?

A. I think that's referring to a worldview that permits the entertainment of a broader spectrum of values than picking a single worldview or a segment of, let's say, the continuum or, you know, breadth of possible worldviews.

Q. So values, as you understand it, refers -- or fundamental values refers to differing worldviews?

A. They issue from -- values issue from worldviews, yes.

Q. And the fundamental values that are referred to here are religious values, are they not?

A. No, not all -- not all.

Q. Don't they spring from a religious worldview?

A. Many do, but not all.

MR. WILCOX: Let me mark this as Exhibit 3.

(Exhibit No. 3 was marked.)

Q. (BY MR. WILCOX) Would you take a moment to look through Exhibit 3 and confirm to us, if you can, that that is a copy of the Articles of Incorporation and the Article 901 report of the Foundation for Thought and Ethics to the State of Texas?

A. Yes. I'm certain this is the Foundation for Thought and Ethics.

Q. If you turn in to the third page in the exhibit, it is titled, Articles of Incorporation?

A. Uh-huh.

Q. And if you go down to Article 5, it says -- and I quote, The purposes for which the corporation is formed are: One, the primary purpose is both religious and educational, which includes but is not limited to proclaiming, publishing, preaching, teaching, promoting, broadcasting, disseminating and otherwise making known the Christian gospel and understanding of the Bible and the light it sheds on the academic and social issues of our day, close quote.

Would that be an accurate statement of the purpose of the Foundation as you had it in mind when you founded it?

A. No, it wouldn't.

Q. Why is this inaccurate?

A. Well, because we had not -- we had not begun work. Work had begun on The Mystery of Life's Origin. This language was -- was encouraged -- was urged by the attorney that was helping us file. I was very -- I was very uncomfortable with it because it's very explicit and gives a lot of detail that we were not in a position to know, and so I insisted on the phrase "but is not limited to." And I would say the way you phrased the question, no -- in fact, what we do is not -- is not -- you know, we've got 25 years of track records. This does not describe it.

Q. If you turn in a few more pages, after Article 8 appears a signature. Is that your signature?

A. Yes.

Q. If you go to the page that has three signatures on it, that appears to be Jon Buell. That would be you?

A. Yes.

Q. Sandy Buell, would that be your wife?

A. Yes.

Q. And I can't quite make out the third signature?

A. Ed Haltom -- Ed Haltom, Jr.

Q. And who was Mr. Haltom?

A. He was the first chairman of our board.

Q. Is it your testimony that the language in Article 5, describing the primary purpose of the Foundation, was not language that -- that you had a hand in creating except for the phrase "but is not limited to," and all the rest of it is what your lawyer came up with?

A. Obviously, I -- I assented to it under -- at his urging. I -- I perceived it to be very broad in scope so that -- I think that his sense was that if it's broad, it will include whatever you do.

Q. Well, Subparagraph 2 of Article 5 goes on to say, The general purpose -- quote, The general purposes and powers are to have and exercise all of the rights and powers conferred on non -- nonprofit corporations under the laws of Texas, and it continues thereafter. That would be a pretty general statement of authority, wouldn't it? Did you have any problem with that language?

MR. MATEER: Object to form.

A. I had no -- I had no objection to that language.

Q. (BY MR. WILCOX) Is it your testimony that the attorney

you were using authored the language in the first paragraph?

A. He certainly drafted it.

Q. Okay. Did he draft it without having had prior discussions with you about what your thoughts were for the purpose of the organization?

A. I'm not certain I -- I'm not certain I remember this with clarity, but I'll tell you what I think I remember is that it was done without, for example, any requests from me for a draft, think this over for a day or whatever, that it was done, you know, across his desk, in his office. And I was informed at that point that I -- that we needed a purpose statement.

Q. Okay. So sitting across his desk, in his office, did you and he talk about your idea of what the purposes of the Foundation were?

A. Yes.

Q. And in your description of him -- in your description to him of those purposes, did he take notes or don't you recall?

A. I don't recall.

Q. When you saw Article 5 in writing, did you say anything to him like, Oh, no, you got it all wrong. That's not our purpose at all?

A. I didn't use those words. I --

Q. Did you say that in words or substance?

A. I objected. I told him why I felt it was not -- not correct or useful. It was far more descriptive than we had any way

of -- of knowing at that time.

Q. So you didn't want to be limited to those purposes, correct?

A. Right.

Q. Those were your purposes, but you weren't sure that for all time you were going to be limited to those purposes; is that right?

A. No, no. It was more specific than -- than -- than our purposes. You know, I've been a -- I've been -- I've been on five broadcasts as a guest; these were not our plans.

Q. Was it your plan, one way or another, to make known the Christian gospel and understanding of the Bible and the light it sheds on academic and social issues of our day?

A. Not through FTE.

Q. Why did you sign it?

A. I was persuaded that it was cast in broad language as a means of allowing the natural growth and development of the organization in whatever direction it went. And as I say, it went in quite a different direction.

MR. WILCOX: Mark this as Exhibit 4.

(Exhibit No. 4 was marked.)

Q. (BY MR. WILCOX) Would you take a moment to review Exhibit 4.

MR. THOMPSON: Could we have a Bates stamped number on that, please?

MR. WILCOX: I'm sorry, there is no Bates stamped number on this, which will become apparent in a minute.

MR. THOMPSON: Okay. Thank you.

Q. (BY MR. WILCOX) Have you had a chance to read it, sir?

A. I'm still reading it. All right.

Q. Sir, Exhibit 4, as is apparent from the legend up at the top, is a transcription by a Mr. Matzke of NCSE of something that -- as I understand it, he got off the web. And what it is a transcription of is a description of the Foundation for Thought and Ethics. Is that description something that you wrote?

A. I am not certain. I would not expect -- oh, he got this off the web in '05.

Q. I think it is an archive of a document that was much, much earlier.

A. Uh-huh. I'm uncertain if I wrote this.

Q. According to the last paragraph -- I'm sorry, according to the second paragraph, the first project is nearing completion, which would place this sometime in the mid-'80s; is that right?

A. It would -- it would place it in the very early '80s, possibly in '81 or maybe even in '80.

Q. It describes the project being a rigorous scientific critique of the theory of prebiotic, P-R-E-B-I-O-T-I-C, evolution; that would be the development of living matter from nonliving matter?

A. It would be the origin of the first living cell.

Q. What was the name of that -- of the book that resulted from that project, if there was one?

A. It was The Mystery of Life's Origin.

Q. And is it your understanding that The Mystery of Life's Origin was nearing completion in '80 or '81?

A. Yes.

Q. Can you think of anyone else, other than you, who might have written this description of the Foundation for Thought and Ethics back in the early '80s?

A. No. I -- no. I don't know who -- who else would have written it.

Q. In the first paragraph, it says, quote, The Foundation for Thought and Ethics has been established to introduce biblical perspective into the mainstream of America's humanistic society confronting the secular thought of modern man with the truth of God's word, close quote.

Is that consistent with your reasons in establishing FTE?

A. That is, perhaps, consistent with my thinking at the time. It certainly doesn't represent what we chose to do.

Q. This was a description of something a little more confrontational than what you chose to do?

A. Confrontational --

Q. It says, Confronting the secular thought.

A. Oh, yes. Yes. Again, if I -- if I wrote this.

Q. In the last paragraph, it says, quote, Operating primarily as a Christian think tank, the Foundation emphasizes, first, publishing -- and it continues thereafter.

A. Uh-huh.

Q. Would that have been an accurate description of the way FTE operated in the early '80s?

A. No. No, it would not. The very first thing we did was The Mystery of Life's Origin.

Q. Well, that was publishing, wasn't it?

A. Yes, but it wasn't -- nobody would -- nobody would read the book and say, Oh, a Christian think tank must have done this. It won accolades from the highest levels of science worldwide.

Q. You continue, 95 percent of what the Christian press publishes is written to Christians. We've been talking to ourselves. Through the work of the Foundation, Christians are challenged to make their voice and view heard in the published arenas of discourse.

MR. MATEER: Object to form.

Q. (BY MR. WILCOX) And it continues.

MR. MATEER: Excuse me, object to form.

Q. (BY MR. WILCOX) Was that consistent with your views at the time?

A. Which -- which -- which sentence?

Q. What I just quoted, 95 percent of what the Christian press publishes is written to Christians. We've been talking to

ourselves. Through the work of the Foundation, Christians are challenged to make their voice and view heard in the published arenas of discourse.

A. I would say, generally, yes.

Q. So at least that part of it is consistent with your understanding at the time?

A. Right.

Q. Would you disavow any of this as a description -- an accurate description of the Foundation at the time?

A. Yes, I would. As I say, what we were working on at the time was The Mystery of Life's Origin, which has -- you know, which won favorable reviews in the Yale Journal of Biology and Medicine, the Journal of College Science Teaching. Klaus Dose, one of the top three or four origins of life researchers in the world, did a review on the origin of life science for the previous ten years. He -- he made the respective -- respect -- respected reference to a point that was introduced in The Mystery of Life's Origin, whereas all the rest of the science of origin of life studies was, in his -- in his view, going down a rabbit trail.

Q. Well, it is accurate, then, that in the early '80s, you were nearing completion of a rigorous scientific critique of the theory of prebiotic evolution, so that's accurate?

A. That's right. That's right.

Q. And it's also accurate, quote, Next we will develop a two-model high school biology textbook?

A. It -- it was our intention at that time.

Q. A two-model high school biology textbook is a reference to a textbook that presents both an evolution and creationist's view, isn't it?

A. It is a reference to a full basal textbook that would have done that. And early on in the project, we realized that it was a mistake. We didn't have the resources to publish a full basal biology textbook that, for example, you'd put up for adoption in the state level adoptions it and so forth. So when we went to a supplement, quite obviously, we were supplementing a basal textbook. So the two-model dimension of the original intention was dropped.

Q. And by "two model," we refer to an evolutionary model and a creationist model, do we not?

A. No, not a creationist model.

Q. An intelligent design model?

A. Well, as -- as you know, the term "creationism" was not defined at that point.

Q. Okay.

A. The National Academy and the Supreme Court had not spoken to that issue.

Q. All right. We have --

MR. WILCOX: How much time is left?

Q. (BY MR. WILCOX) In common parlance, without regard to parameters later established by National Academy of Science or the

Supreme Court, was an evolution/creationist dichotomy, the two-model dichotomy, as it was commonly understood?

A. No, not creationist.

Q. Not creation -- I'm not saying creationist as later defined --

A. No, but you said, As commonly understood. We did not intend to do a creationist work as, at the time, commonly understood.

Q. Okay. You would develop a more subtle understanding?

A. No. A more scholarly, careful understanding that interacted more deeply with -- with established science --

Q. Okay.

A. -- and philosophy of science.

Q. Okay.

MR. WILCOX: Let's take a break here for the change of tape.

THE VIDEOGRAPHER: We are off the record. The time is 9:53 a.m.

(Break was taken.)

THE VIDEOGRAPHER: We are on the record. The time is 10:02 a.m.

MR. WILCOX: I'd like to mark next an exhibit, which is the 2003 Form 990, Return of Organization Exempt from Income Tax filed with the Department of the Treasury Internal Revenue Service. And I have with me both the full return and a

return, which just shows the front page, the signature page and the single page that I'm interested in.

MR. MATEER: Can we --

MR. WILCOX: Do you have a preference as to what I mark?

MR. MATEER: Well, my -- my preference is that we have the short one, which you've got ready. It looks like you're anticipating that preference. And can we have an agreement that's a confidential document? I don't even know what it -- I have not seen it, but let -- let me look at, but I assume that that's --

MR. WILCOX: It says right on the document, Open to public inspection,

MR. MATEER: Okay.

MR. WILCOX: -- so it's hard to agree.

MR. MATEER: All right. I got you.

(Exhibit No. 5 was marked.)

Q. (BY MR. WILCOX) Sir, is that your signature that appears on the second page of the Exhibit 5?

A. Yes. Well, my -- my signature is not on this document that you've handed me. I have initialed a change in the spelling of the name.

Q. Okay.

A. But I signed this document.

Q. All right. And if you go to the third page, there is a reference to the organization's primary exempt purpose.

A. Uh-huh.

Q. And the explanation -- and this may be truncated -- promoting and publishing textbooks presenting a Christian perspective of ACAD. Would ACAD be an abbreviation for academic issues --

A. It may have said academic topics or academic issues.

Q. And is it a fair statement of the purpose of the Foundation as of 2003 of promoting and publishing textbooks presenting a Christian perspective of academic issues?

A. No, it's not. This -- this was prepared -- the document -- the 990 was prepared for us by a CPA who had -- was not our normal CPA. Was not -- had not been familiar with us. As you can see, he misspelled our -- our name, Foundation for Thought and Ethics. He mis- -- misspelled my name, and so -- no, he -- you know, it probably was his perception, but certainly it was not accurate.

MR. WILCOX: Okay. May we mark this Buell exhibit -- next in order.

(Exhibit No. 6 was marked.)

Q. (BY MR. WILCOX) Sir, would you take a moment and review Exhibit 6, and I'm going to ask you just about the first paragraph.

A. All right.

Q. Again, this is a document that -- that does not have a Bates stamp because it is something we obtained off the Internet. Do you recognize this document, sir?

A. Yes, I do.

Q. What is it?

A. It is the -- about FTE page on our website.

Q. And it's titled, What is Our Mission?

A. Uh-huh.

Q. And it says, in response to that question, quote, the Foundation for Thought and Ethics is working to restore the freedom to know to young people in the classroom, especially in matters of worldview, morality and conscious -- conscience, and to return the right of informed consent to families in the education of their children, close quote.

A. Uh-huh.

Q. Did you come up with that language?

A. Uh-huh.

Q. Is that a yes?

A. Yes, excuse me. Thank you. Yes.

Q. What did you have in mind with the phrase "restore the freedom to know to young people"?

A. I had in mind that science is held hostage to a naturalistic worldview, which will acknowledge the validity of intelligent causation in a variety of fields, forensic science, archaeology, setting the search for extraterrestrial intelligence, but won't entertain that same causality in biology. I think that's -- that is what I would describe as holding something hostage. There is not a principled reason why that is artificially

removed from the otherwise normal operation of science, and so I think that that shuts off avenues of knowledge.

Q. And you continue, Especially in matters of worldview, morality and conscience.

How does the shutting off of inquiry in biology relate to matters of worldview, morality and conscience?

A. Well, let me take morality. Our book, Sex in Character, addresses the issue of abstinence from a character development perspective. Character development is a major movement within education today, so I think that's a good example of -- a forceful example of -- of what we're saying here.

Q. That there is a connection between the way biology is taught and morality?

A. No. We have a book called, Sex in Character, which is a different book, doesn't address the evolution intelligent design question. This is -- this is about our broad mission --

Q. When you say "this," you're referring to the statement in Exhibit 6 that we quoted?

A. Yes, yes. That we just -- you just asked me about, what is our mission.

Q. And my question to you: When you said that restoring the freedom to know was a reference to a need for an approach to biology education that permitted views other than strictly natural ones --

A. Right.

Q. -- I was asking you how that related to, quote, Matters of worldview, morality, and conscience?

A. I see. Okay. Well, it's obvious that it relates directly to a matter of worldview.

Q. How is -- how is that?

A. Well, whether we lived in a closed, naturalistic universe or whether we are --

Q. As compared to what?

A. As -- as compared to one in which we could entertain intelligent causation where we find the results of intelligent causation. We find a book. Are we permitted to conclude that it was produced by some intelligent source, or do we have a system that requires that we not consider that possibility.

Q. Okay. When you say when we find a book, are you referring by analogy to DNA?

A. Yes, for example, yes.

Q. Okay. Then it goes on to say, Return the right of informed consent to families.

A. Yes.

Q. What does that refer to?

A. That refers to young people learning things in textbooks that are inimical to their worldview and to their expectations. Nobody -- well, I'll -- I'll leave it at that.

Q. That are inimical to their expectations, is that what you said?

A. Yes, right.

Q. Expectations about what?

A. About being -- being taught something that they would not accept if they knew what they were going to be taught -- or if the parent knew what the child was going to be taught.

Q. So this is a reference to letting parents control what their children are taught; is that right?

A. You know, I don't think that informed consent refers in any context to control. I think that the control remains with the school, but I think a parent has an obligation -- as a responsible -- responsible for a child -- to be informed about that child's education.

Q. Okay. And having been informed, would you say that the parent has the right to consent or not?

A. Well, I think the -- the parent has a right to consent or seek alternatives.

Q. Okay. And what would those alternatives be?

A. A different school, a charter school, a school in a district that's open for students to go across town to another public school, home school, private school, etc.

Q. Okay. Do you include in the right of informed consent the notion that the parent -- the parent should have the ability to insist that a more accommodating worldview be taught in his child's school?

A. I don't know -- we certainly have never said that. I

don't -- I don't -- and I don't think I would agree with that.

Q. Okay. So --

A. The right to insist, I don't -- I don't think so. I think that a parent has a right to communicate --

Q. And to seek influence?

A. -- and to seek understanding, and certainly has a right to send his child somewhere else if -- you know, if that seems to be indicated.

Q. Okay. So at least when we're talking about Exhibit 6, this is an accurate description of the Foundation's purposes?

A. I would say so, yes and -- and an accurate description of what we have done for 25 years.

MR. WILCOX: Let me have you mark this as Exhibit 7.

(Exhibit No. 7 was marked.)

MR. WILCOX: We have a Bates number, Richard.

MR. THOMPSON: Okay.

MR. WILCOX: It begins with 548.

Q. (BY MR. WILCOX) Would you take a moment, sir, and review Exhibit 7.

A. Did you want to direct me to a specific place on the letter, or shall I read the entire letter?

Q. Well, I'm going to stop my questions at the top of page -- no, I'm not -- I'm not. I'm going to go all the way through it, so you better read it all the way through.

As they say at the SAT tests, you can put down your pencil when you're finished.

A. All right.

Q. All right. First of all, can you confirm -- well, first of all, let me say that Exhibit 7 is a document produced by the Foundation's counsel, Bates stamped beginning 548 through 550.

Do you recognize this as a document that you prepared on or about the date it bears, February 13 --

A. Yes, uh-huh.

Q. -- 1995?

A. Yes.

Q. And why was this prepared?

A. It was seeking financial support.

Q. And were you seeking to give to potential donors an accurate description of the Foundation and its activities?

A. Yes.

Q. I was puzzled by one thing. The logo for the Foundation looks like an apple; is that right?

A. Yes.

Q. Is that an apple with a bite out of it or an apple with a bright spot?

A. That is a clip art apple.

Q. Why the apple?

A. Education.

Q. Is this the fruit of the tree of knowledge?

A. Teacher -- apples are associated with teachers.

Q. Okay. According to the second paragraph, the mission is described as providing supplemental textbooks to teachers in the public schools, quote, so they can teach the truth in the classroom, close quote.

What did you have in mind by "the truth"?

A. Well, I think that goes back to the issue of a -- of an entire spectrum of worldview being -- being proscribed from the classroom.

Q. Okay. If we go to the last paragraph on the first page, it reads, quote, Our commitment is to see the monopoly of naturalistic curriculum in the schools broken -- and it goes on after that.

Is that a monopoly insofar as biology instruction is concerned, or does it apply to other subjects as well?

A. It certainly applies more in biology than other subjects.

Q. Is biology what you had in mind here?

A. I wouldn't say that it was that focussed, but I -- but I will say that, you know, there's more difficulty in biology -- astronomers are not at all like biologists. Chemists are not at all like biologists --

Q. Physicists?

A. Yeah, physicists, right. So -- but -- but it's -- it's a problem in other areas, of course.

Q. But it's acutely a problem in biology because of the way

evolution is taught; is that right?

A. The way naturalistic or scientific materialistic evolution is taught.

Q. Okay. You continue in the bottom paragraph, on the first page, quote, Presently school curriculum reflects a deep hostility to traditional Christian views and values. Were you -- close quote.

Were you referring there to anything other than school curriculum in biology?

A. Oh, yes. I would say so.

Q. What other areas of school curriculum reflect a deep hostility to Christian views?

A. In the 1980s --

Q. Well, we're talking 1995 here, are we not?

A. What I'll describe for you in the '80s has continued --

Q. Okay.

A. -- to the present. I'm simply -- in the 1980s, an extensive survey of -- for example, social science textbooks was done over 80 books by Dr. Paul Vitz of New York University along with four other colleagues. The results of the study was published -- were published widely in the press, and they -- and they indicated this.

Q. What did they indicate?

A. They indicated that school curriculum reflects a deep hostility toward traditional Christian views and values -- they

didn't use those words, but they made that statement.

Q. Did they say how it exhibited that deep hostility?

A. I'm certain that examples were probably given, but I don't remember the -- the details of the study. And of course, as it was published -- I mean, as this report was published in press reports, you'd have a wide variety of characterizations.

Q. What did you have in mind in writing Exhibit 7 as to the deep hostility traditional -- to traditional Christian views and values in school curriculums?

A. Well, I think I had -- had in mind what I just reflected to you, but that biology is a main -- is a major area of -- of offense.

Q. Okay. And the sentence continues, quote, And indoctrinates students to this mind set through subtle but persuasive arguments, close quote.

A. Uh-huh.

Q. What were the subtle but persuasive arguments you had in mind?

A. Ken Miller's popular best selling biology textbook with Prentice Hall. When it's talking about the origin of body plans in the Cambrian period, has words to the effect -- and this is not an exact quote -- these -- he referred to these body plans that appeared first in the Cambrian as experiments, and he said, This is -- there is no intentionality purpose or plan to these body plans. He was asked before a body of scientists -- that statement

was read to him -- it was a debate between him and Michael Behe before the American Scientific Affiliation. Can you tell us, is this a statement of philosophy or science, and if it's philos- -- if it's science, where are the facts?

He paused. He said, I -- I didn't know about that. I guess my coauthor wrote that. There was a ripple of laughter through the room. Then this -- the questioner, who was a geologist -- a teaching geologist said, Well, then, could we expect to see that statement removed when the book -- when the next edition comes out? And -- and -- and Dr. Miller assured us that we could. But instead, it was -- it was not only not removed, but it was beefed up. I would say that's a good example.

Q. Of a subtle but persuasive argument?

A. Sure. Less subtle after that exchange, but...

Q. At the top of Page 2, you say, quote, This is not merely a war over ideas, but over young people and how their lives will be shaped. The current deplorable condition of our schools results in large part from denying the dignity of man created in God's image, close quote.

Is it fair to say that one of the things you had in mind as a goal of the Foundation was to address that current deplorable condition and get schools out of the business of denying the dignity of man created in God's image?

A. I think that -- you know, in every case, what we are trying to do is not to get schools out of something, but to

complete topics that are taught in part artificially truncated, and here's an example. American history -- early American history is being taught less and less. The Declaration of Independence makes this point, but students are taught less and less about -- about our founding. And this would be an -- an excellent example that goes right to what you've asked me.

Q. When you say it makes this very point, you're referring to the line, They are endowed by their Creator with certain inalienable rights?

A. Yes, right. Right.

Q. You continue, Even junior high students recognize that if there is no Creator as textbooks teach, then there is no lawgiver to whom they must answer.

Is that something that the Foundation believes should be rectified?

A. I think the Foundation believes that there should -- the -- the artificial elimination of intelligent cause in biology should be reversed. And just as intelligent causation is entertained in other sciences, forensic science, archaeology, search for extraterrestrial intelligence and others, it should also be entertained -- not pushed down anybody's throat, but entertained instead of shut out, eliminated artificially, you know. When -- when, in fact -- in principle -- it's exactly the same as what's accepted in other science areas.

Q. Is it your view that it is simply unacceptable that

students either in junior high or high school should not be instructed in any subject in such a way that they might conclude from that instruction that there is no lawgiver to whom they must answer?

A. No. I think that -- I think that instruction falls out of the topic -- good instruction falls out of the nature of the topic being taught. I'm just saying that in terms of -- of biological origins, we have a -- we have a truncated system. We have an inconsistent system. We say, as a matter of principle, science can detect intelligent causation. That's why we're rummaging through the dark crannies of space looking for signs of intelligence somewhere else in the universe, but when it comes to biology, we can't entertain that possibility. And I'm saying that that's artificial, that's not academically sound. And yes, it does have social consequences.

Q. And in fact, the consequence is that it leads students to think that there is no lawgiver to whom they must answer and that is simply unacceptable; is that right?

A. Teachers have told me that --

Q. Is that right, yes or no, please?

A. I'm sorry, would you ask the question again?

MR. WILCOX: May I have it reread?

(Requested Portion was Read.)

A. I would not state it that way. I would say --

Q. (BY MR. WILCOX) Didn't you state it that way right here?

A. No.

Q. How would you say it?

A. You said -- you said it leads students. What I'm saying is that it forecloses a broader perspective.

Q. And by foreclosing a broader perspective, it leads students to recognize that if there is no lawgiver, that there may be no lawgiver to whom they must answer. Isn't that the problem you're concerned with?

A. I'm not in agreement with your term "leads students." If -- if there are two doors and one's locked, I'm not willing to say that we are leading students through the other door. I'm just saying that there -- there is -- that science, biology in particular, is held hostage to a naturalism that is inconsistent -- academically inconsistent. And as a result, students don't have the options that they would have -- if they're struggling with this -- with this -- you know, the whole question of origins, they have one option, where science actually offers two. That's bad science instruction.

Q. And it's unacceptable because it leads students to a conclusion that there is no lawgiver to whom they must answer; isn't that right?

A. It leaves students with only that choice sanctioned by the schools.

Q. Right. And that's unacceptable to the Foundation?

A. Yes.

Q. Okay. That's simple.

Am I correct -- let me see if I can cut through a lot of paper -- when the first version of Biology and Origins was being written, neither you nor Mr. Thaxton was particularly careful to differentiate between intelligent design as a way of describing what you were talking about versus creation or creationism as a way of describing what you were talking about?

A. I would say that we understood from the very beginning that we were talking about something that was -- was not -- could not be characterized by any accurate description of creationism. But we -- we left the selection of terminology -- we used creation as a placeholder. We left the selection of terminology for something that was genuinely different and new, and yet was consistent with accepted science in other areas.

We -- we left that until very late in the process. For example, we -- we had not done that when we circulated Biology and Origins. I remember the conversation where we finally selected from among terminology that appeared in other scientific literature over a really fairly long period of time, certainly not limited to the 20th century.

One -- one term was used by a British cell biologist whose research was on cancer, and he used the term "creative intelligence," but we selected a term that was -- that was in the literature. We selected it very late in the process. It may have been the last important thing that we did with the --

with the manuscript.

Q. When you say "very late in the process," was that after Edwards v. Aguillard was decided?

A. Actually, it was -- it was -- it was in 1987, possibly.

Q. You understand that Edwards v. Aguillard was decided in the middle of 1987?

A. Yes, uh-huh.

Q. Was it after Edwards versus Aguillard was decided?

A. I don't think it was. I don't know, but I don't think it was.

Q. I guess we'll have to go look at some paper.

THE WITNESS: Could I -- could I confer with my --

MR. WILCOX: Sure.

THE WITNESS: -- attorney right here?

MR. WILCOX: Sure.

MR. MATEER: Go off the record.

MR. WILCOX: You have to go off the record and remove your --

THE VIDEOGRAPHER: We're off the record. The time is 10:36 a.m.

(Break was taken.)

THE VIDEOGRAPHER: We are on the record. The time is 10:39 a.m.

(Exhibit No. 8 was marked.)

Q. (BY MR. WILCOX) Would you take a very brief look at

Exhibit 8. I'm not going to ask you about very much of this at all.

A. All right.

MR. WILCOX: Exhibit 8, Richard, doesn't have a Bates number. It is titled, Summary Chapter, and handwritten above that is Introduction 2. And it is not sequentially paginated, but roughly 50 pages long. I will quote the parts that I'm interested in, Richard.

MR. THOMPSON: Good.

Q. (BY MR. WILCOX) First, let me ask you, sir, do you recognize any of the handwriting on Exhibit 8?

A. Yes, it's mine -- what I see is mine.

Q. Would this be an early version of Biology and Origins?

A. I'm uncertain. It certainly is a -- an early version interacting with Biology and Origins. Why it would be captioned Chapters 3 and 4, I'm -- I can't be confident unless I take further time and I still may not be confident.

Q. If you look at Page 3, which is headed, Summary Chapter --

A. Uh-huh.

Q. -- the second paragraph says, quote, This book is about the origin of life. Where did life come from? What caused it to come into being? Do living things exhibit the characteristics that we see resulting from natural causes or from an intelligent cause? This is the question that divides evolutionists and creationists in

modern controversies in biology. Evolution is the theory that natural causes are adequate to account for everything in the natural world, including life itself. Creation is the theory that certain phenomena must be explained by intelligent causes, close quote.

As of the time that this fairly early version was prepared, the writers were content to use the phrases, creationists or creation or creationism, would that be true?

A. I don't know that. Where is -- where is the word "creationism"?

Q. Well, we refer here to creationists and creation as a theory and as people advocating that theory. Do you understand that?

A. Yes, I do.

Q. Okay.

A. I'm certain this was earlier than the National Academy of Science statement or Edwards v. Aguillard.

Q. Okay. Turn to Page 22, if you would, please.

A. Okay.

Q. And in the first full paragraph, it reads, quote, Taking the rocks at face value, one might conclude that there never was a progression from one type to another -- that each type originated independently, period. This is the creationist position. Creation is the theory that various forms of life began abruptly with their distinctive features already intact. Fish with fins and scales,

birds with feathers and wings, mammals with fur and mammary glands.

Do you recall that there was a time when that was a way of describing the theory of creation?

A. Are you referring to the term "creationist position," or are you referring to the description that you just read?

Q. If you would differentiate between the two, I'm -- fine. I -- I was not differentiating between them, but if you would like to explain the difference?

A. Well, if -- if you would, ask the question again.

Q. Do you recognize the statement that I just quoted as the -- an accurate description of the creationist position at the time this was written -- not necessarily a complete statement, but in so far as it goes, an accurate statement?

A. I -- would say, now, that it's -- it's too narrow to be accurate.

Q. Because in light of later developments; namely, the National Academy of Science position that you referred to earlier --

A. Well, I mean, we --

Q. -- this is incomplete?

A. No, no. Not -- not that. Although, that's true. In other words, you know, the term "creationist" wasn't loaded with these -- with these authoritative definitions when this was written.

Q. Okay.

A. Did not have the specialized meaning that they do now have. But what I'm saying is that this is -- this is a -- this is the creationist position -- well, creationists or people who hold that, you know, that God was involved or whatever, hold a wide variety of views. For example, Michael Behe agrees with the -- with a dissent with modification, which is, you know, fundamental to evolution. He's one of the coauthors of our forthcoming book.

Q. Does he know that?

A. He knows everything I just told you.

Q. Does he know he's a coauthor of your forthcoming book?

A. Yes. Yes. Of course.

Q. Is the statement that we just have been referring to equally a description of the intelligent design position?

A. No. For the reason I just cited to you. Michael Behe is an intelligent design proponent. He wouldn't accept that statement.

Q. How about you, would you accept it?

A. I wouldn't accept it the way it's written.

Q. Let me read to you from Of Pandas and People, Second Edition --

A. Okay.

Q. -- Page 99 to 100. Quote, Intelligent design means that various forms of life began abruptly through an intelligent agency with their distinctive features already intact. Fish with fins and scales, birds with feathers beaks and wings, etc.

A. Uh-huh.

Q. It's not word for word the same, but it is almost exactly the same in substance, is it not?

A. It is -- it is. And the word that I would -- that I think is operative that should have been changed -- and was in Pandas -- is form instead of type.

Q. I'm reading from Pandas, sir.

A. Yes.

Q. Okay.

A. And I'm saying that what you read was differences between forms, and this -- and this uses the word "type," and I think that's an incorrect choice of words.

Q. The word "type" is incorrect?

A. Yes, I think so.

Q. The word "type" does not appear in Of Pandas and People that I just quoted?

A. Good. Then we edited it well.

Q. The word "type" was in the prior sentence?

A. Yes, that's right. That's why -- I thought you asked me if I agreed with this -- with this statement in this -- in this old version of a manuscript.

Q. Okay. So what's the difference between type and form?

A. Type is variously assigned specialized meanings. Form is a general word that doesn't get you into -- into a narrow definition. And form is a -- is a very well known -- well-used

word in -- in biology, morphological form.

Q. So referring back to Exhibit 8, if it had been revised to say, quote -- with one modification -- Taking the rocks at face value, one might conclude that there never was a progression from one form to another; that each form originated independently. This is a creationist position.

That would be equally well a descriptor of the intelligent design position as you understand it; is that right?

A. I don't know what context there is here to this document. But certainly, in the book, the context is that intelligent design does not mean that there is no change in morphology in the form, that there is no -- for example, microevolution. Almost every -- I have never heard of an intelligent design advocate who does not believe in microevolution.

Q. By "microevolution," you mean one finch becomes another finch?

A. I don't mean necessarily confined within species, if that's what you're asking me. I think that we observe -- experimentally in the field, we observe microevolution and intell- -- and -- and Pandas and People certainly makes that clear. So without that context, you know, I would say that to pull this sentence out without that context would -- would be artificial. That's why it's a book and not bumper stickers.

Q. In Pandas, Second Edition, that we were just referring to in the sentence immediately before the one I quoted earlier, it

says, quote, Darwinists object to the view of intelligent design because it does not give a natural cause explanation of how the various forms of life started in the first place.

Are you happy with that statement -- that formulation?

A. Yeah, I think I am, but if you would, please, read -- read it to me again.

Q. Let me put it in front of you.

A. Where is it?

Q. Right at the bottom of Page 99.

A. Yes, I think they do. Yeah, I think that's accurate.

Q. That's an accurate description of Darwinists' objection to intelligent design --

A. Uh-huh.

Q. -- correct?

Other than the change of type to form that we've been talking about, is the description of the creationist position or the intelligent design position acceptable to you?

A. The description -- this -- this right here?

Q. The two that we've been comparing for the last five minutes.

A. No. As I say, it needs context. The -- the concept is -- is larger than can be expressed in three sentences.

Q. In the context of Exhibit 8 and the context of Pandas and People, Second Edition, is the statement accurate?

A. You know, I wouldn't know. I have not read Exhibit 8 in possibly -- possibly since 1985, maybe '86.

Q. In both Exhibit 8 and Pandas and People, the context is a discussion of gaps in the fossil record, what the fossils show.

A. Uh-huh.

Q. In that context, are you satisfied that this is a good description of both?

A. No. I -- what I'm saying is that -- that in Pandas, the context qualifies it. Certainly, the position of Pandas is that there -- is not that there is no morphological change or no microevolution. But this statement does not give that, so I'm not going to agree to what I think you're asking me.

Q. I don't want to take time, but if it were true that Exhibit 8 makes the same distinction between macroevolution and microevolution that you made earlier, would you then be satisfied?

A. I don't want to speculate on Exhibit 8.

Q. Okay. Well, we might have time to come back to it, we might not.

A. All right.

Q. We'll put it aside for now.

A. All right.

MR. WILCOX: Let's mark as Exhibit 9 a compilation that begins with Bates No. 3167.

(Exhibit No. 9 was marked.)

Q. (BY MR. WILCOX) I will represent to you, sir, that this

was among the documents produced by your counsel from the files of the Foundation.

A. Uh-huh.

Q. Can you tell from this document approximately when it was prepared?

A. Well, it looks like it was --

Q. At least as late as 1987?

A. Yeah, was the -- was the page that's stapled to it, was it with the -- with the corpus of the document when it was -- when it was given to you -- I'm sorry, when it was given to the ACLU?

Q. Actually, it was given to my law firm.

A. Okay. Thank you. I'm sorry.

Q. And these were not stapled this way. They were just sequential pages, and I made an inference that these sequential pages, since they were separated by green sheets of paper, went together.

A. Right. You're not going to stipulate the existence of a staple if it wasn't there.

Q. That's right. This says, Copyright 1987, down at the bottom.

A. Uh-huh.

Q. Does that tell us this was prepared in 1987, or might it have been prepared after 1987?

A. No. It probably was prepared -- I mean, it could have been prepared entirely in '87, but probably was, you know, worked

on in '86, '87. That seems like a likely possibility.

Q. All right. If you would turn to the page numbered 3170, the author -- am I correct that the author of this was Mr. Thaxton?

A. Yes, uh-huh.

Q. The author asks, referring to repetition of similar structures in various animals, quote, Are they the products of natural forces acting blindly on a single parental lineage going back to the beginning, or is the key to these similarities the common engineering work of an Intelligent Designers, paren, an intellect who could have prepared some variation from directly designed forms as at least one designing tool.

Do you recall a period when you were talking -- when you were thinking about using the phrase "an Intelligent Designer"?

A. Yes.

Q. Okay. And the Intelligent Designer, as you understood it, would have been God; isn't that right?

A. No. You can't -- you can't conclude that.

Q. No. I'm saying as you understood it.

A. No. Are you asking me as I understood what we were writing, or are you asking me --

Q. As you understood the -- the general issue of where does life come from, don't you understand that life comes from an Intelligent Designer?

A. An Intelligent Designer, yes.

Q. That's your worldview, isn't it?

A. This does not express the details of my worldview.

Q. I'm not asking you that, sir. I'm asking you, in your worldview, doesn't life come from an Intelligent Designer?

A. Yes.

Q. And isn't that Intelligent Designer God?

A. Science can't take us there.

Q. I'm not asking you that. I'm asking about --

A. We're talking about a document here. If you -- if you stipulate that we're going to change the subject, fold the page over, and you're going to ask me about my personal view, that's one thing. If you want to explore what's here, then -- then the answer is no. Science cannot take us there.

Q. I understand your position that science cannot take us there. I'm not asking you about your position as a scientist, because you're not a scientist.

A. That's right. Although, I can understand science.

Q. I'm asking you about your position as Jon Buell, among other things, former --

A. Jon Buell believes that the Intelligent Designer is -- is God.

Q. Thank you. It's not hard.

A. Just all I'm saying is that's -- that's not relevant to what's here. That's all I'm saying.

Q. The articulation that we have here on 3170 is common

engineering work of an Intelligent Designer. Would that refer not just to the design, but to implementation of the design?

A. I don't know.

Q. Okay. Is it the view of you, as you understand intelligent design as a matter of science now -- not as a matter of worldview or religion -- that intelligent design describes a blueprint that was never actually put into effect in the universe or world as we know it?

A. Could you ask that in another way?

Q. I'll try.

The notion intelligent design suggests that the Intelligent Designer stopped at the point of design without ever implementing the design in creatures, which seems to me to be not getting us from there to here.

A. Uh-huh. I understand.

Q. So doesn't intelligent design, as a scientific theory, also assume that whoever was responsible for the intelligent design actually implemented that design in creatures as we know them, including man?

A. Yes, intelligent design is a subset of intelligent causation, which is well known and understood in science. And so yes, intelligent design refers to intelligent causation, and that would mean designing something that exists.

Q. So you could have as well used the term Intelligent Designer and Creator -- that's cumbersome?

A. No. The word "creation" carries an understanding -- a widespread understanding that we did not intend by -- by intelligent design.

Q. Okay. This is a good point for a break.

A. All right.

THE VIDEOGRAPHER: We are off the record. The time is 11:03 a.m.

(Break was taken.)

THE VIDEOGRAPHER: This is the beginning of Tape No. 2 in the deposition --

MR. WILCOX: No. 3.

THE VIDEOGRAPHER -- VHS Tape No. 2 in the deposition of Jon Buell. We are on the record. The time is 11:15 a.m.

Q. (BY MR. WILCOX) Sir, I should have, but omitted to ask you the broad question: Do you recognize Exhibit 9 as a working draft of the development of Biology and Origins?

A. Yes.

Q. And did you also recognize Exhibit 8 as a working draft of Biology and Origins?

A. Exhibit 8 is -- obviously, it's FTE. I -- I don't know if I would call it that. It's confusing to me the way the captions are, mixing chapters. I -- so I have no recollection of that. I mean, it's obvious that it's an FTE document. That's my handwriting on it, but I don't know that I'd call it a draft of

Biology and Origins.

Q. If you turn to -- back to Exhibit 9 and turn to Page 14, which is Bates stamped 3183 --

A. All right.

Q. In this draft, the authors are explicit that the -- a purpose of the book is, quote, To provide a tool that will correct a presumption of philosophical naturalism without introducing a presumption of supernaturalism.

A. Right.

Q. Is it correct that that explicit declaration didn't make its way into Pandas?

A. If you're asking me if that sentence did not make it into Pandas, I -- you know, I don't know, but certainly the point did. Now, you're looking at the second edition. This was in the first edition.

Q. Oh, I -- I'm sorry. In the first edition of Pandas, was the point explicitly made that Pandas was a tool to correct a presumption of philosophical naturalism? If not in those exact words, that point was explicitly declared?

A. You know, I'm uncertain. The point that I know was in the first edition of Pandas, is that we were not introducing a presumption of supernaturalism.

Q. If you turn to Page 15 of Exhibit 9, this version is also explicit in -- in saying, quote, We also believe that American high school students are in no danger of being coerced in matters of

origins if they are given all the relevant facts and lines of argument on important issues.

Am I correct that that explicit declaration did not make its way into Pandas?

A. I don't know.

Q. I'll hand you Pandas and ask if you --

A. Well, again, this was from Biology and Origins, so this would have been in Biology and Origins and in the first edition of Pandas.

Q. Okay.

A. This -- this document.

Q. Do you know why that explicit statement might have been taken out?

A. I'm sorry, point -- point me to it again.

Q. It's the very last paragraph in Exhibit 9.

A. Okay. Yeah, excuse me. No. I don't know any reason why it would be taken out, certainly not in a disagreement or, you know, a rejection of it.

MR. WILCOX: May we mark this Exhibit 10.

(Exhibit No. 10 was marked.)

MR. WILCOX: Richard, as Exhibit 10, we have the compilation that begins Bates No. 2376.

MR. THOMPSON: Thank you. Where does it end, which Bates number?

MR. WILCOX: It ends 2664.

MR. THOMPSON: Thank you.

Q. (BY MR. WILCOX) Sir, I'm going to just ask you a few questions to see if I can get these in the right chronological order. It may not be possible, but if you would, I would like to compare part of Exhibit 9 and Exhibit 10. And I noted that if you look at Page 3171 of Exhibit 9 and 2379 of Exhibit 10, one has the illustration in it and the other doesn't. Would that suggest to you that Exhibit 9 might be a later version than Exhibit 10?

A. You know, I have no idea.

Q. Okay.

A. We had way too many manuscripts, read by too many readers, modified again and again as any author would who's diligent. I have no idea.

Q. They both bear the copyright 1987 legend at the bottom of the first page.

A. Uh-huh.

Q. That doesn't give us any real information on -- as to their sequence?

A. I mean, I wouldn't know how it could. You know, I haven't seen these documents, probably since 1987.

Q. If you look at Page 2380 of Exhibit 10 --

A. Okay.

Q. -- this talks about creation and creationists instead of intelligent design and design theorists. Does that give you a clue as to where in the sequence --

A. Not in this small sequence of -- within 1987. It certainly clarifies the fact that -- that this was an early version, as does the title, Biology and Origins. And obviously, as I told you earlier, that the last thing we did was -- or one of the last things that we did was to choose the term "intelligent design."

Q. If you look at Page 16 of Exhibit 10 and compare it with Page 14 of Exhibit 9 -- strike that.

MR. WILCOX: Why don't we mark this Exhibit 11.

(Exhibit No. 11 was marked.)

MR. WILCOX: Richard, we're turning to Bates Nos. 1492 through 1506.

Q. (BY MR. WILCOX) Sir, do you recognize Exhibit 11 as another working copy of material connected with either Biology and Origins or Pandas?

A. Yes, uh-huh.

Q. On the first page of Exhibit 11, in the third full paragraph, there's the phrase "designed by intelligent causes." Is that another iteration that was considered for the notion that you were trying to get articulated?

A. I'm sorry? Is that another iteration what?

Q. Of the notion you were trying to articulate.

A. Well, Charles Thaxton is the author of this. So if there is a meaning that I don't understand for what you're asking, then you would have to -- he would have to clarify that in his

deposition. You know, all -- all scholars, you know, improve their drafts. We circulated this document widely. I don't know if it was written after some scientist made a suggestion or a comment on that or not. I -- I don't have any problem with this terminology, but I don't know how to answer what you're asking me.

Q. Okay. If you turn to Page 12 in the exhibit, in the last full paragraph, it says, quote, The case for design by a master intellect presented here and throughout the text has genuine explanatory value in science.

A. I'm sorry, what -- what paragraph?

Q. The last full paragraph.

A. Oh, I see it. Okay.

Q. Uh-huh. Do you have any recollection of that formulation being considered as a satisfactory explanation of what the Foundation was trying to communicate, designed by a master intellect?

A. Are you asking if I agree with this? I'm sorry.

Q. I'm asking if you recall whether that was another phrase that was addressed or considered for expressing the notion that you were trying to communicate with the Foundation's book?

A. Well, it's obvious -- obviously one that he chose.

Q. Right.

A. I'm quite certain that he did not mean master in some supernatural sense -- in some religious sense. I think he meant it in the sense of the word that we use it, the day in and day out in

our shops, you know, he's masterful at what he does, etc. So I -- I mean, I think that's obviously what he intended.

Q. Okay. So it would have been more accurate to say designed by a masterful intellect?

A. It would have been equally accurate, yeah.

Q. If you turn to the next page, after quoting a statement on a TV series from Carl Sagan, Mr. Thaxton says, quote, To allow such unabashed expressions of naturalism in the public school science classroom is deplorable. The answer is not simply to remove these offending sentences and others like them from the TV series and from the current crop of textbooks, but to recognize the source of the problem and to correct it, close quote.

Am I correct that no such controversial language made its way into Pandas?

A. You know, I don't know. I don't know if this is -- this could well be the version -- I see it's marked up for typesetting. This could be the version that was published in the first edition of Pandas. I don't know the answer to that.

Q. Okay. Isn't it true that as Pandas evolved, you tried to be careful to assure that it was less and less explicitly value laden and more and more focused purely on science issues?

A. You know, I'm not saying that -- that we did not do that, but I've never thought about that. We worked -- we -- there were many iterations of every chapter of the introduction in every chapter. The fundamental viewpoint was worked out by Dr. Thaxton,

reviewed and interacted with and critiqued by a large number of readers, men and women of science.

When you -- when you have a -- when you have a theme that -- that goes throughout a book and you make an improvement a -- or you know, you correct a nuance or whatever, then you have to read back through the whole thing to be sure that you're consistent. So I would never have expressed what we were doing the way you just did.

Q. Is it correct that nowhere in the second edition of Pandas, including in the Note to Teachers, which is the analog to a word to the teacher --

A. Uh-huh, uh-huh.

Q. -- which is Exhibit 11 --

A. Uh-huh.

Q. -- that there is any language as explicitly condemning of philosophical naturalism and as adamant in its characterizations of it? And I'll give you the book so that you can satisfy yourself.

A. Sure. I'm not aware of anything -- what was your term -- I'm sorry, what was your term for the characterized this passage on Carl Sagan?

MR. WILCOX: May we have that read?

THE REPORTER: Back where we talked about Carl Sagan?

MR. WILCOX: Yes. Just read back my question, if you would.

(Requested Portion was Read.)

A. As explicitly condemning of philosophical naturalism?

Q. (BY MR. WILCOX) Yes, sir.

A. I'm not sure that I know that. I would have to read both documents.

Q. Okay.

A. I mean, certainly, there's -- there's -- there's no comfort given to philosophical naturalism as the only, you know, philosophical viewpoint in either document. So to compare those, I'm -- I'm uncertain.

Q. All right.

MR. WILCOX: May we have this marked as Exhibit 12. Richard, we're marking 5552 through 5555 as Exhibit 12.

MR. THOMPSON: Thank you.

(Exhibit No. 12 was marked.)

Q. (BY MR. WILCOX) Mr. Buell, I'll represent to you that the collection we've marked as Exhibit 12 is taken from the files that your counsel produced to us.

A. All right.

Q. This version does have a date, 3-10-89.

A. All right.

Q. That would place this squarely in the Pandas era; is that right?

A. Yes. Well, it would -- yes.

Q. We're no longer --

A. Pandas was published in '89.

Q. Okay. In this version, there's a discussion not merely of evolution and intelligent design, but a third option, life coming from earth, quote, from some other part of the universe, close quote.

A. Right.

Q. You smiled.

A. Right.

Q. And I think we can all agree that that possibility didn't make its way into Pandas; is that correct?

A. Certainly not represented by me.

Q. Do you know -- why was it taken out?

A. I'm uncertain. It's a -- it's a reference to a view expressed by some of the most celebrated scientist in the word at the time, Fred Hoyle -- Sir Fred Hoyle, who was one of the authors of one of the major cosmogonies considered by scientists, and he wrote a book -- you may have heard of it -- entitled, The Intelligent Universe. He is not a believer in God, but he gives testimony in his book to the unequivocal mark of intelligent design. And then in -- in a journal called, Icarus, Chandra Wickramasinghe and -- and -- and Dr. Hoyle --

MR. WILCOX: Just the way it sounds.

A. -- published an article on the thesis that an intelligent life form elsewhere in the universe seeded the earth with life

spores, and that they have been observing life here. We -- earth is like a laboratory. They are watching how it develops, how it evolves and so forth. This was a serious article in a serious science journal. And you know, we may have -- we may have at one time toyed with referring to that, and then said, You know, that's just so far out on the -- you know, the fringe that we're not going to confuse the issue by bringing that in. I'm certain we discussed it, you know.

Q. (BY MR. WILCOX) Okay. If you had brought it in, it would have been counter to the larger worldview purposes that the Foundation had in publishing these books, wouldn't it?

A. I mean, it would have been a thesis that disagreed with it. I don't think it would have had any effect in countering our worldview. I think it actually would have helped because we are saying that -- you know, that science can only identify the product of intelligence. And so these men have identified the product of intelligence, and so they're trying to come up with an explanation.

Q. Which is not saying it's an Intelligent Designer?

A. Well, I think they're saying it's an Intelligent Designer. It's just -- it's just also, you know, naturalistic life. They would say it evolved wherever it is.

Q. Okay. And I think this is last in the sequence, you'll be happy to know.

MR. WILCOX: We're marking as Exhibit 13, Bates Nos. 5786 through 5803.

MR. THOMPSON: Thank you. What was the first number?

(Exhibit No. 13 was marked.)

MR. WILCOX: 5786.

MR. THOMPSON: 5786. Thank you.

MR. WILCOX: Uh-huh.

Q. (BY MR. WILCOX) Now, I'll represent to you that this is another compilation taken from the files produced by your counsel. Do you recognize this as another in process --

A. Yes.

Q. -- part of the development of Pandas book?

This one, while it continues to have the copyright 1987 legend of the bottom, has a handwritten notation in the upper right-hand corner of the first page, quote, Current master, 10-5-88.

A. Uh-huh.

Q. I take it that we should never infer from the copyright 1987 that we see at the bottom, whether this was, in fact, generated in '87 or '88. Would that be true?

A. I think, you know, there's the -- there's the general procedure of copyrighting of -- you know, giving notice of copyright protection even when you're circulating copies to readers. Doesn't mean that you cannot modify it, continue to edit and improve it.

Q. If you turn to Page 4, which is Bates 5790, we have a

paragraph up at the top of the page that is using another phrase, The Handy Work of an Intelligent Artisan. Do you see that phrase?

A. I'm sorry, it's in --

Q. The third line down --

A. Third line down.

Q. -- of the top, first full paragraph.

A. Oh, yes. Okay. I'm sorry, yeah.

Q. Then in the third from the bottom of that same paragraph, it uses the phrase, A Series of Creative Events by an Intelligent Designer?

A. Uh-huh.

Q. And then in the next paragraph, it uses the phrase, Designed by Creative Intelligence?

A. Uh-huh, uh-huh.

Q. I take it that as of this date, Mr. Thaxton and you had not fixed on a singular way of communicating what you were trying to get across?

A. Well, I think that the attempt here is to -- is to amplify on an idea. So, you know, the last one that you made reference to, Creative Intelligence, that is the expressed terminology of the British cell biologist, cancer researcher, E.J. Ambrose. And you know, as I say, we were looking at that term, but we chose intelligent design instead. So Thaxton is simply fleshing out a concept here. And -- and unless the -- unless the term "intelligent design" is used here, then yes, this

was prior to that selection.

Q. Okay.

A. And I'm quite certain that had we selected the term "intelligent design," it would have made it into the introduction -- had we selected it by the time this -- this document was -- was done.

MR. WILCOX: Okay. We're going to mark as exhibit next in order, which would be 14, a single page that does not have a Bates number.

(Exhibit No. 14 was marked.)

MR. WILCOX: And as Exhibit 15, another single page that does not have a Bates number.

(Exhibit No. 15 was marked.)

Q. (BY MR. WILCOX) Sir, do you recognize Exhibits 14 and 15 as being comparable presentations of features of treatment and style of Pandas for presentation to potential publishers?

A. Well, certainly, I recognize 15 as that. I'm not certain that 14 was -- it may have been an in-house draft. I'm -- I'm uncertain.

Q. Okay.

A. It -- it would have been done with a view toward, you know, editing it for the purpose that is obviously prepared -- 15 is obviously prepared for.

Q. The difference that I see between Exhibit 14 and Exhibit 15 is that Exhibit 14 refers to creationists, and Exhibit 15 refers

to intelligent design --

A. Uh-huh, uh-huh.

Q. -- right?

A. Uh-huh. And as I told you, creation -- the word "creation" held a place hold -- served a placeholder purpose for us until we selected the term.

Q. In Paragraph 10 of Exhibit 14 and in the comparable paragraph of Exhibit 15, it says, quote, Does not resort to bogus creationist arguments or, quote, evidences, close quote.

A. Uh-huh.

Q. And Exhibit 15, it just says, Does not resort to bogus arguments or evidences.

A. Uh-huh.

Q. Was creationist just a placeholder there?

A. The use of the word "creationist" in 7 and 10 are different. In 7, it's a noun and it simply is a lack of a better way to express what an advocate of creation is, which is a broad, general, undefined by legal and scientific authorities term. So a creationist -- like an evolutionist is one who espouses evolution. A creationist is one who espouses creation. This is prior to those definitions by the National Academy of Sciences and the U.S. Supreme Court.

Q. Excuse me. Excuse me. Let me interrupt because this is referring -- Exhibit 14 is referring to Pandas and People. Do you see that?

A. Uh-huh.

Q. And that's certainly after 1985, isn't it?

A. Probably, yes. I don't know that it certainly is, but probably, yeah.

Q. Okay. Well, prior to 198- -- late '86, wasn't the working title of the book Biology and Origins?

A. In '86, it was Biology and Origins.

Q. So this was after '86, right?

A. Right.

Q. Okay.

A. All right. So it's a noun referring to people who advocated or espoused a position in -- in No. 7. In No. 10, it's a modifier. It is a -- it's an adjective. It -- it describes arguments, and when you use it in that way, it's -- it's obvious that you're talking about the creation science arguments. And those two -- those two are not the same. Even though the word comes out the same, it's part of the ambiguity of the language prior to the clarification.

Q. Well, in this case, after the 1985 clarification?

A. Yes. Right. But -- but -- but as I say, we -- we chose our terminology right before publication. If we were developing a draft or something like that, you know, we were using language in the generally accepted use of the -- of the language. And I'm -- I'm sure when we wrote this, we had the distinction I just described to you very well in mind.

Q. Okay. And another comparison, both Paragraphs 10 refer to the bogus creationist arguments -- or bogus arguments and conclude with or, quote, evidences, close quote.

Why is the word "evidences" in quotes?

A. I don't know.

Q. Evidences is a term used in Christian apologetics, is it not?

A. Yes. I saw that in the Forrest document, but unfortunately, it's used widely in science as well.

Q. In the plural form, evidences?

A. Sure. They have to allow for more than one evidence.

Q. All right.

MR. WILCOX: This is a good point to take a break. How are we doing on the tape?

THE VIDEOGRAPHER: We're off the record. The time is 11:51 a.m.

(Break was taken.)

THE VIDEOGRAPHER: We are on the record. The time is 11:52 a.m.

Q. (BY MR. WILCOX) Sir, I'm asking the reporter to mark as Exhibit 15 to your deposition --

THE REPORTER: 16.

Q. (BY MR. WILCOX) Sir, I'm asking the reporter to mark as Exhibit 16 to your deposition a three-page compilation, Bates stamped 2259, 60 and 61.

MR. THOMPSON: Thank you.

(Exhibit No. 16 was marked.)

Q. (BY MR. WILCOX) Do you -- first of all, do you recognize the handwriting that appears on this?

A. Yes, I do.

Q. Is it yours?

A. It's mine, yes.

Q. This is entitled, Short List of Key Revisions in Second Edition of Pandas.

A. Uh-huh.

Q. Did you prepare this, or did someone else prepare it?

A. I prepared this.

Q. Do you consider this to be a reasonably accurate short list of key revisions in the difference between the first and second editions of Pandas?

A. I think as far as it goes, I believe it would be accurate. I -- it's -- it's been a long time since I read it, and I certainly remember that it was not -- was not comprehensive.

Q. Right. And I -- that would be inferred from the title, Short List?

A. Yes, well, good inference.

(Exhibit No. 17 was marked.)

MR. WILCOX: May we mark as Exhibit 17 a document that's Bates stamped 622 through 625.

Q. (BY MR. WILCOX) And sir, the only part of this I'm going

to ask you about is the paragraph at the bottom of the second page that begins, The biography omitted another book Mr. Davis cowrote,

A. I'm sorry, the second page of 16?

Q. No, sir. The second page of Exhibit 17.

A. Okay. Yes, uh-huh.

Q. And according to this, which is a -- a newspaper article, as I understand it, quote, The biography omitted another book Mr. Davis cowrote, comma, Case for Creation, published by an arm of the Moody Bible Institute, Chicago. Of Pandas, he says -- referring to Mr. Davis -- of course, my motives were religious. There's no question about it, close quote.

Did you ever have any conversations with Mr. Davis about whether he had religious motives in participating in the writing of Pandas?

A. No. I mean, he never expressed this to me. I knew that he was a Christian.

Q. You had broadly defined religious motives in bringing Pandas to fruition and to the market, correct -- addressing the values, issues that we talked about earlier, correcting them?

A. Yes. But -- but as we've discussed the rationale for acting on those values -- you know, we all have values and we have governors. We -- we govern our -- the expression of our motives. If there were not a situation which was in academic default, the -- the truncation of the use of -- of intelligent causation in science, we use it here, we use it here, we use it here, we use it

here -- we don't use it here, then there would be no basis for action.

Q. Wouldn't there be the same possibility that school children would come to the inference that the philosophical naturalistic view was the correct view if they didn't hear the alternative of intelligent design?

MR. MATEER: Object to form.

A. Would you -- would you -- would you ask me that again, please?

Q. (BY MR. WILCOX) Your central purpose was to address the concern that without an alternative explanation to the philosophically natural explication of Darwinism, school children would come to believe that there was no Creator and that they didn't have to answer to any creator. And you thought that was deplorable. We've been through that, correct?

A. I thought that was deplorable because there was a -- another viewpoint that had legitimacy that -- that -- that was treated as legitimate in science and scholarship. And I was quoting teachers who have said to me over the years that it's more and more difficult to control the students in their classroom and to control the behavior of the classroom because of this viewpoint.

Q. Have you received letters from teachers to that effect?

A. I doubt it. I sure couldn't produce one, but I've certainly been told that.

Q. Okay. By the way, if we go back to Exhibit 14, Bullet

Point 4 says, quote, Tested with high school students with favorable results.

A. Uh-huh.

Q. Does that mean that your accomp- -- objectives were accomplished?

A. No. It means the -- the feedback by the teachers and administration was positive.

Q. They liked the book?

A. They felt that it was useful, that it was productive and they liked it, yes.

Q. Useful and productive in accomplishing the goals of the Foundation?

A. No, I -- I wouldn't say that. I would say that they felt that it was -- it made a -- it made viable academic contribution to what they were trying to do as educators.

Q. Did you make any effort to test whether your goals were being met?

A. Oh, no.

MR. WILCOX: Now, we can stop. Take a break.

THE VIDEOGRAPHER: We are off the record. The time is twelve o'clock p.m.

(Break was taken.)

(Exhibit No. 18 was marked.)

THE VIDEOGRAPHER: We are on the record. The time is one o'clock p.m.

Q. (BY MR. WILCOX) Welcome back.

A. Thank you.

Q. At my request, the reporter has marked as Exhibit 18 to your deposition a five-page article whose name escapes me, but it's Challenging Darwin's -- something. I can't make out quite what it is, but it appears to have been in the May 1995 issue of some Moody publication?

A. Uh-huh, uh-huh.

MR. WILCOX: And Richard, I'm sorry, there is no Bates number on this.

MR. THOMPSON: Okay. Thank you.

Q. (BY MR. WILCOX) This appears to me to be an article by Mr. Mark Hartwig, H-A-R-T-W-I-G?

A. That's right.

Q. Are you familiar with this, sir?

A. You know, I'm not, but this is among the materials that you got from us?

Q. I believe so, yes.

A. Okay. All right.

MR. MATEER: I don't know that that's necessarily true.

MR. WILCOX: I don't know --

MR. MATEER: I don't know that it's necessarily true. I'm sorry.

A. Well, I'm not familiar with the article anyway.

Q. (BY MR. WILCOX) You are familiar with Mr. Hartwig?

A. Yes.

Q. Mr. Hartwig, in fact, is a coauthor of the Note to Teachers in Pandas?

A. Right.

Q. And he describes himself on the last page of Exhibit 18 as managing editor for the Foundation for Thought and Ethics. Would that be an accurate description?

A. Yes, that was -- that was correct.

Q. You have had conversations with Mr. Hartwig, I assume, as to whether you and he are of like mind about intelligent design?

A. You know, in general, we are. I'm certain I haven't talked to him about everything that's in a five-page article.

Q. Okay. I was struck -- if you turn to the second page -- by a paragraph in the left column, third from the bottom --

A. Is it Page 17?

Q. Page 16. That reads: Most important, this process happens without any purposeful input, no creator, no Intelligent Designer. In Darwin's view, chance and nature are all that are needed.

Had you ever talked with Mr. Hartwig about the need to distinguish carefully between referencing a creator and referencing an Intelligent Designer, or whether they could both be -- colocally, at least -- referenced together?

A. You know, I don't understand from the construction of the

sentence whether there are -- they are there in apposition or whether those are -- you know, he's trying to, you know, further define the first, or if -- if he's spreading the concept out.

Q. I interpret this as saying that there's no purposeful input, either from a creator or a designer, however you would choose to label them.

A. Uh-huh.

Q. Would you interpret it the same way?

A. Yes.

Q. Okay. If you go over to the next page, Page 17, down at the bottom of the page there's a quote from Phillip Johnson that reads, quote --

A. I'm sorry, which column?

Q. The leftmost column. Okay.

Quote, The whole point of Darwinism is to explain the world in a way that excludes any role for a creator, Johnson says. You would share that concern about Darwinism, wouldn't you?

A. I wouldn't agree -- I wouldn't agree with the statement.

Q. But it's the whole point that you would share that concern, would you not?

A. I would never express my concern with these words.

Q. But would you share that concern?

A. No.

Q. All right. If you go to the next column, there is a heading, Ruling Out Design. And it begins by saying, Today a new

breed of young evangelical scholars is challenging those Darwinist assumptions. And it then mentions Stephen Meyer, William Dembski and Michael Behe. Would you agree that they are young evangelical scholars?

A. No.

Q. Because they're not young, they're not scholars or they're not evangelical?

A. All three. No, sorry. Please don't record that.

To my knowledge, they're not -- they're not -- not all of them is evangelical.

Q. Would you -- would you agree that Stephen Meyer is evangelical?

A. To my knowledge, he is.

Q. Would you agree that William Dembski is evangelical?

A. I'm uncertain.

Q. If you turn to Page 18, under the heading, Design of Science, Mr. Hartwig writes: William Dembski, another evangelical scholar. Do you see that?

A. Yeah, I think that there is a tendency among writers -- and -- and Mark would not necessarily be excluded or exempt from this -- to make that assumption because somebody is in intelligent design, whereas intelligent design scientists are quite diverse in their background. There's a lot of diversity. A lot that would never classify themselves as evangelicals or behave like evangelicals.

Q. Would William Dembski characterize himself as a serious Christian?

A. Yes.

Q. And finally, there's a reference to Michael Behe described as a Catholic biochemist at Lehigh University. As a Catholic, would Mr. Behe be excluded from categorization as an evangelical?

A. Now, you'll have to ask him that.

Q. Okay. At the top of Page 19, center column, it says, quote, In March 1992, a landmark symposium took place at Southern Methodist University in Dallas.

That's a symposium that the Foundation sponsored, is it not?

A. Yes, uh-huh.

Q. In fact, you worked hard to put that together, didn't you?

A. Yes, uh-huh.

Q. And then it says, Phillip Johnson, Stephen Meyer, William Dembski, Michael Behe and other Christian scholars squared off against several prominent Darwinists.

That was indeed to point of the symposium, wasn't it, to have Christian scholars square off against Darwinists?

A. No.

Q. No?

A. It was to have intelligent design scientists square off

against Darwinian scientists.

Q. Moody -- is that the same as the Moody Bible Institute, Chicago that was referred to in Exhibit 17?

A. At least at one time they were organically connected. I don't know if they still are or not. This used to be -- Moody used to be called Moody Monthly. I don't know what the status was when Mark wrote this.

Q. Was -- was Moody Monthly a magazine devoted to Christians?

A. Yes, yes.

Q. Speaking of affiliations, I was puzzled --

MR. WILCOX: Let me mark as Exhibit 19 and 20 --

(Exhibit Nos. 19-20 were marked.)

MR. WILCOX: -- two letters with the Bates Nos. 3528, 29 and 547.

Q. (BY MR. WILCOX) The first, 3528 and 29, is a letter produced by your counsel to me from the files of the Foundation, and it's on the letterhead of Haughton Publishing Company and it is signed by you?

A. Uh-huh.

Q. What is your affiliation with the Haughton Publishing Company?

A. It was by -- by contract that we -- we exercised the marketing functions of Haughton.

Q. So there is a contract in force between -- or there was a

contract in force between --

A. There was a verbal contract, yeah.

Q. Okay. And what -- what did it provide?

A. It provided that we would take complete responsibility of marketing.

Q. Under the Haughton name?

A. Yes, uh-huh.

Q. And that you would do that?

A. Uh-huh.

Q. Using your name, but under Haughton's letterhead?

A. Uh-huh.

Q. Okay. Were you ever paid by Haughton to do that?

A. No.

Q. You actually paid them, didn't you?

A. Paid them? I mean, we paid them to print the book.

Q. Okay.

A. Right.

Q. To your knowledge, had Haughton Publishing Company published any book before Pandas?

A. I was told that they had.

Q. Did you check into that?

A. No.

Q. Who told you that they had?

A. Henry Skrabanek.

Q. And was he the president of Haughton?

A. He was, yeah. I know they had published because I saw them a -- an agricultural journal, and they had reserved a block of ISBN numbers. They pre-existed our ever discussing Pandas, and they said that they had done this -- done another book or two.

Q. All right. Haughton Publishing, to your knowledge, was not a recognized textbook publisher --

A. No.

Q. -- were they?

A. No, they were not.

Q. Had you submitted Pandas to several textbook publishers?

A. We -- we had.

Q. How many, roughly?

A. You know, I'm going to say over 20. It may be more -- much more than that. We -- it was a long time ago, and we had similar extended efforts with the mystery of life's origin before we had three offers to publish it, so...

Q. Am I correct that you couldn't get any offers to publish Pandas from the regular publishing houses?

A. That's correct. We were invited to do a slightly different book with one.

Q. But as to Pandas, you had to arrange with Haughton Publishing Company for a private publication?

A. Private?

Q. In the sense that you advanced the money for them to put it into print. They didn't advance the cost of it, did they?

A. They advanced some cost; they advanced some money.

Q. Do you recall how much they advanced --

A. No.

Q. -- and how much you advanced?

A. Because it was a long-term -- it was a long-term relationship, so I don't.

Q. Can't approximate at all?

A. No.

Q. Without guessing -- and I don't want you to guess.

A. No. I -- it would be a total...

Q. I'd like to shift gears and talk about the affidavit that you submitted in support of the motion by the Foundation to intervene. In that, you make some statements I wanted to ask you about. One was that you -- this is in Paragraph 6 -- that you were generally aware of the Kitzmiller litigation through media reports. Do you recall when you became generally aware?

A. You know, it was close to the turn of the year, but I don't recall explicitly. I just know that there was a burst of media coverage. My guess is that it was in December. I don't know that, you know, for a fact that that's exactly when it was.

Q. And did you understand from the media coverage that the litigation was over the teaching of intelligent design in public schools?

A. Well, no, I didn't know that. I know -- I knew that -- I knew that Pandas was placed in the library. The general media --

you know, motif was that students were told they could access the book in the library.

Q. And that the complaint sought to prevent that from happening?

A. I had no -- I didn't know what a complaint was. I certainly didn't see the complaint until very recently.

Q. Well, didn't you understand that the plaintiffs in the case were trying to prevent the school board from directing their students to the opportunity to examine Pandas and People?

A. From what I saw in the press reports, it wasn't clear to me that the school board knew the difference between creation science and intelligent design.

Q. But they knew -- but you knew the book involved was Pandas, didn't you?

A. Yes.

Q. And did you understand that the complaint sought to keep the school board from implementing the policy of having public school students be referred to Pandas as an alternative explanation of the origins of life?

A. Yes.

Q. On the grounds that to do so would be unconstitutional interference of religious matters with secular matters in schools?

A. I'm not aware of when I heard that the grounds were constitutional.

Q. You can't give us any approximation of that?

A. I'm sorry, I can't. You know, we -- of course, I read the articles as they -- you know, as we pulled them off the Internet or whatever, but they out ran me. And -- and so I -- I did not read them all. I have some that I haven't read, and so no, I -- I couldn't tell you. All I can tell you is I did not -- at first, I did not know that there was a constitutional basis for what they were alleging. I knew that -- I knew that the policy was at issue.

Q. Okay.

MR. WILCOX: In the records that have been made available to us, I didn't see any newspaper articles, except I think one New York Times article.

MR. MATEER: I think there's a few -- there's a couple.

MR. WILCOX: Are there. Okay. Maybe I didn't search carefully enough in the few days available.

MR. MATEER: I understand.

MR. WILCOX: Am I correct that none were removed in the review process --

MR. MATEER: No, no, no. None -- you are correct, none were removed.

Q. (BY MR. WILCOX) Is it correct that Mr. Dembski is editor as well as an author for Design of Life?

A. It is.

Q. You say in Paragraph 10, It was not until the last few

weeks that you realized -- skipping over some words -- that FTE's interest in the lawsuit were not being adequately represented.

A. Yes.

Q. How did you become aware that FTE's interests were not being adequately represented?

MR. MATEER: Well, let me just -- I know you're not asking it -- but just let me -- to the extent he's asking for any communications that you received from your counsel in this case -- I don't believe he's asking you for that because that would reveal attorney/client privilege, but I would just caution you that I would instruct you not to answer any questions that ask for any communications that you've had with your counsel. But --

MR. WILCOX: The content of any, not the fact of any.

MR. MATEER: The content, yes, exactly.

A. Well, I think it came to my attention late in the process that the ACLU, National Center for Science Education, wanted this case to go to the Supreme Court and be an -- and intelligent design be declared creation science.

Q. (BY MR. WILCOX) Okay. Is that the basis for your statement that FTE's interests were not being adequately represented?

A. That's a part of it, yes.

Q. Well, that -- what you said, I could connect with how intelligent design was in jeopardy in the lawsuit, but how did you

1 come to the conclusion that FTE's interest in the lawsuit --
2 whatever that means -- were not being adequately represented?
3 A. Well, we are the only publisher of a textbook conveying
4 the view of intelligent design. So obviously, we would have very
5 significant financial interests and -- and could be done great harm
6 by virtue of -- of the ACLU effort.
7 Q. So what you meant was that the Dover Area School District
8 didn't necessarily have your economic interest at heart. Is that
9 what you mean?
10 A. Yes. It -- there was no evidence that they did, even
11 after this was a -- you know, a well-matured event.
12 Q. Okay. In Paragraph 13 of your affidavit, you project
13 some potential lost income. With respect to potential lost income
14 from the sale of Pandas, you estimate approximately $213,000.
15 A. Uh-huh.
16 Q. How did you arrive at that figure?
17 A. Well, we have inventory on hand of 1,340 books, which we
18 are selling at -- 24.95 is the retail. If you calculate an average
19 discount -- average discount on the sale -- the actual sales
20 price -- sales price is the -- the selling price is the operative
21 number -- times 1,340, you -- let's see, you come out to -- I think
22 it's 22 -- roughly 22,000 -- 21,000 and some dollars -- closer to
23 $22,000. If you were to go just to the next print run, which we
24 would sell at -- the retail price would go up to 29.95. This has
25 been planned for a long time.

Our other comparable books are 29.95 retail, and with the average selling price -- with the average discounted selling price, the actual selling price would be -- I think it's $22 and a few cents. We're talking about another 100 and -- like a 190 and some thousand dollars, the two of them combined, existing inventory and the first -- the next print run of Pandas would be $213,000.

Q. A print run is how many?

A. 10,000. And then if you take the first print run of the Design of Life at the average discounted selling price, a print run of 10,000, it brings the total to over 500,000. And of course, no publisher publishes a book expecting to just have one print run, but conservatively speaking, it's over 500,000.

Q. Okay. Over what period of time was that?

A. No publisher can actually predict that either because the same amount of promotion expense can back a book, and if the market responds right and events are right and so forth, that can sell out the first print run overnight. And on the other hand, it can stretch out into years. So the Design of Life is unlike other books that we've published. It's very difficult to say over what period of time. I mean, publishers would love to know that, and -- and most of them are -- are more experienced than we are. And the -- and the school market is -- is very complex -- much more complex than the trade market.

Q. When Pandas was published, was that an initial print run

of 10,000?

A. Actually, it was published with an initial print run of 12 and a half thousand for the hard back and 10 or 12 and a half thousand for a paper back version.

Q. And how long did it take Pandas to run through that print run?

A. I don't know. I'm going to say maybe something like four years.

Q. Pandas certainly did not live up to your market expectations or hopes, did it?

A. Not to our hopes.

Q. And not even to the projections that you fur- -- furnished perspective publishers, correct?

A. Right. We were -- we were --

Q. You were disappointed?

A. We were disappointed, but what we told the publisher -- the letter that you have -- was a potential, was a figure. I think we used the term "potential," but -- right.

MR. WILCOX: In the interest of getting finished, what I would like to do is label a couple of documents together and then ask the witness about them. So if we could have Document 566 labeled Exhibit 21, and Document 3441 labeled Exhibit 22.

(Exhibit Nos. 21-22 were marked.)

MS. SHOTZBARGER: Does the first document start with 565?

MR. WILCOX: 566.

MS. SHOTZBARGER: And what document would that be, because we were wondering -- does 566 -- does that have a -- Haughton Publishing on the front -- letterhead.

MR. WILCOX: 566 is September 9, '93.

MS. SHOTZBARGER: And the second number, 3 --

MR. WILCOX: 3441, Friday, March 10, Dallas Morning News.

Q. (BY MR. WILCOX) First, let's talk about Exhibit 21, if you don't mind.

A. All right.

Q. Did you ghostwrite this letter?

A. I think I drafted it for them, uh-huh.

Q. Why didn't you just write it under your name on the institution's letterhead?

A. Well, because he had -- I mean, he was coming to them as an official organization. He had the fiduciary interest in the project, and so I think -- you know, I mean, they would have regarded what he had to say in a serious way because of that fact.

Q. How were book sales -- the results of book sales shared between Haughton Publishing and the Foundation?

A. You know, like, I -- at a later time, I could have the answer to that. It was a -- it was a complex and shifting algorithm, and -- and I honestly don't remember.

Q. Was this part of that same oral agreement?

A. No. No. This was -- no. No. This was hammered out very carefully.

Q. A written agreement?

A. A written -- yeah, a written, right.

Q. Do you still have a copy of it?

A. I don't know. I have no idea if I have a copy of it or not. It's likely that you do if I do because of the --

MR. MATEER: That is probably true.

A. Because of the tornado at our -- our offices.

Q. (BY MR. WILCOX) We -- we could not find one.

A. Okay.

MR. MATEER: I have not seen it either.

Q. (BY MR. WILCOX) I was particularly puzzled, these three documents in Exhibit 21 are dated four years apart.

A. Uh-huh.

Q. Did they -- were they just filed together. Is that the explanation?

A. You know, I don't know without reading it. Would you like me to read it?

Q. Well, in Exhibit 21 --

MR. WILCOX: Could I ask -- Richard?

MR. THOMPSON: Yes.

MR. WILCOX: Richard?

MR. THOMPSON: Yes.

MR. WILCOX: Could I ask that whoever is moving

papers around to stop because we can't hear anything here.

MR. THOMPSON: Apologize.

MR. WILCOX: Okay. It's happening again.

MR. THOMPSON: Just moving the papers away from the speaker.

MR. WILCOX: Oh, okay.

MR. MATEER: We both have got great phones, Dick, because they pick up everything. I guess that's good -- or bad.

Q. (BY MR. WILCOX) Let's look at the last page of Exhibit 11 -- or Exhibit 21. That's advising Haughton Publishing that the application to exhibit at the National Association of Biology Teachers national convention couldn't be accommodated; is that right?

A. I'm sorry, would you ask me that again?

Q. The first paragraph of the September 22, 1989 letter says, Thank you for your application for exhibit space at the National Association of Biology Teachers national convention. I am sorry that at this late date, we were unable to schedule additional workshop sessions. So they couldn't accommodate you. Is that what they're telling you?

A. You know, I don't remember the exact date, but we did exhibit at the -- the first time after Pandas was -- was published, we exhibited at the NABT national convention.

Q. Okay.

A. Does that address your question?

Q. It may.

The September 22nd letter goes on to say, As I'm sure you are aware, NABT supports the teaching of evolutionary theory, and I have enclosed our policy statement on scientific integrity.

You undertook -- understood from that that the National Association of Biology Teachers was limiting what it was willing to donate -- or give space to was products dealing with teaching of evolutionary theory; is that right?

A. You know, I am a little confused because it looks to me like there are, you know, workshop sessions and exhibits both discussed here.

Q. Okay.

A. I don't recall that there would be any reason for us to have had correspondence like this the year after we exhibited on their exhibit floor. I think probably what is being addressed here was our request to -- in addition to exhibiting, have a workshop session.

Q. Okay.

A. I'm not confident of that, but I think that's what's going on here.

Q. Okay. And then the first two pages relate to an NABT convention, I suppose, some three or four years later; is that right?

A. Yes, uh-huh.

Q. And it talks about how the NABT is considering refusing to run the ad for our book. Do you see that?

A. Uh-huh.

Q. Was that because the National Association of Biology Teachers continued to have a policy supporting the teaching of evolutionary theory and requiring that persons advertising in its journal not run contrary to that policy? Was that your understanding of what this flack was about?

A. My understanding of what this flack was about is that -- is that there were -- there was at least one, maybe more, I don't remember, meeting of the board of the NABT where they specifically discussed our request. And we -- we asked if we could have a representative there to make a -- you know, make a proposal or presentation, and they said no. And they then declined our request, and I think that's what's being referred to here.

Q. And in Exhibit 22, am I correct that this is a letter to the editor that you wrote?

A. Yes, uh-huh.

Q. And in this letter, you do not talk about the worldviews issues of morality, conscience and the like that we discussed this morning. You just talk about broadening the science curriculum?

A. Uh-huh. Are you asking me that?

Q. Is that right?

A. You know, it was a long time ago. May I read it?

Q. Sure.

MR. MATEER: Who's the picture of?

THE WITNESS: Hey.

A. Well, in the final paragraph, I am calling for and extolling the importance of intellectual honesty and I would call that a value. I would say that's a very important value in this whole discussion.

Q. (BY MR. WILCOX) Okay. But you're not talking about the values that you were talking about in Exhibit 7, the current deplorable condition of our schools results from denying the dignity of man created in God's image, even junior high students recognize that if there is no creator, there is no lawgiver to whom they must answer and no need for a moral lifestyle. You're not addressing any of those issues?

A. Well, I would say that -- that the lack of intellectual honestly on this subject contributes to the other problem -- it's downstream from this.

Q. But it wasn't explicit in Exhibit 22?

A. Right.

MR. WILCOX: May we have this marked as Exhibit 23.

(Exhibit No. 23 was marked.)

MR. WILCOX: Richard, Exhibit 23 is Bates 841, 42, 43; is that right, or did I hand you the wrong document?

MR. BOYLE: That's not the document you handed me.

MR. WILCOX: Okay. This must be my copy.

MR. MATEER: It's 827, Richard. Is that right?

MR. WILCOX: Yes. And it runs through 837.

MR. THOMPSON: Thank you.

Q. (BY MR. WILCOX) Mr. Buell, do you recognize this document, which I will represent to you was produced by your counsel, as coming from your files?

A. Yes, I do.

Q. What is it?

A. It's a comparison of Pandas to Edwards v. Aguillard to underscore the fact that we had been preparing our book in sync with the court even before the court ruled.

Q. What prepared it?

A. I did.

Q. Did you have assistance from Mr. Johnson?

A. I'm -- I don't think so. I'd be really surprised if -- if we did. I don't remember that.

Q. Did you have assistance from any attorney, whether expert in First Amendment Issues or not?

A. I don't believe so. I might have had one review it, but I honestly don't remember.

MR. WILCOX: We will mark this as Exhibit 24.

(Exhibit No. 24 was marked.)

MR. WILCOX: Exhibit 24 is Bates 841 through 843.

Q. (BY MR. WILCOX) Which I will also represent to you was produced by your counsel from your files.

A. Right.

Q. Do you recognize Exhibit 24?

A. I do.

Q. Did you prepare it?

A. I did, yes.

Q. For what purpose?

A. For the purpose of giving -- specifically, Thomas More, but more generally, attorneys and people who were involved in this -- in this Dover case a window into how legal and school authorities here locally had responded to and handled the particular quote, the key phrase, quote/unquote, by Justice Brennan from Edwards v. Aguillard. Just tracing that through several layers of official professional dialogue and use.

Q. When did you prepare this?

A. Very recently. It would have been, I'm sure, in April or May?

Q. 2005?

A. Yes.

Q. Why did you prepare Exhibit 23?

A. I -- I prepared Exhibit 23 because Charles Thaxton and I had tried to dissuade the lead attorney in Edwards from pursuing creation science, and we felt like the approach that we were taking, which was an educational approach rather than a legislative approach, was much stronger. And so we felt that once the court had spoken, it embraced so many of the things that we had embraced that it was a positive thing for us to show those parallels.

Q. Show them to whom?

A. This was prepared just in general, I think, shortly after the verdict in Edwards. And I'm not even sure who -- who saw this.

THE WITNESS: Oh, here's the spelling of Wickramasinghe.

THE REPORTER: Thank you.

Q. (BY MR. WILCOX) Immediately following the two-column piece, which is the legal scrutiny, is something called Appendix (A), Intelligent Design?

A. Uh-huh.

Q. And Appendix (B), Academic Freedom and Predominating Purpose. Do these all go together in your mind, or is it just happenstance that they were collected together in the files of FTE?

A. I don't know. My guess is that, at the time, I thought they went together. It's been a long time since I -- I read this.

Q. Were Appendix (A) and Appendix (B), if you can remember, prepared as appendices to the legal scrutiny of Of Pandas and People?

A. No. I couldn't -- I couldn't tell you that. I can see from looking that Appendix (A) is the kind of thing that we would have done in several variations over -- over the years.

Q. There were variations of Appendix (A) that you gave to publishers, weren't there?

A. Undoubtedly.

Q. Isn't it true that you, in trying to market Of Pandas and

People or get it published by one of the major publishing houses, people expressed concern that this would be rejected as a religious book or a creationist book?

A. I'm sure that -- I'm sure we heard that.

Q. And so part of your thinking in preparing documents like Exhibit (A) was to address those concerns?

A. I -- I'm certain we never sent this to a publisher.

Q. Okay.

A. By the time the book had this title -- by -- by 1987, we were not -- we were not shopping for publishers.

(Exhibit No. 25 was marked.)

MR. WILCOX: We're marking as Exhibit 25, Bates 404. But this does not have the FTE stamp on it, so I'm a little bit perplexed.

Q. (BY MR. WILCOX) My recollection is coming back to me. I believe Exhibit 25, the first page, was supplied to me by one of my paralegals looking into how Pandas was being advertised. And I see Pandas on the book -- on this page, rather -- under a heading, Creation Science.

A. Uh-huh.

Q. Did you try to market Pandas under the heading, Creation Science?

A. Of course not.

Q. Okay. Then the next page of this is the Creation Research Society Quarterly, and it talks about certain of the books

available from Creation Research Society. And there we have Of Pandas and People by Davis and Kenyon, 17.95.

A. Right.

Q. Did you make any effort to have Creation Research Society announce the availability of Pandas?

A. No. No. We would not have done that, but we -- we -- we sold books to people -- whoever -- whoever ordered them. So -- but we would not have solicited that.

Q. Okay. You referred earlier to the letter I had.

MR. WILCOX: Why don't we mark that as Exhibit 26.

(Exhibit No. 26 was marked.)

Q. (BY MR. WILCOX) Is that two copies or just one?

A. That looks like two.

Q. Oh, one of them might be mine.

A. Oh, yes. Oh, I'm sorry.

Q. That's okay. I don't think I marked this up at all.

This has a legend, BF1. And BF, I think, represents Barbara Forrest. You referred earlier to a letter in the Barbara Forrest report --

A. Uh-huh.

Q. -- about sales projections?

A. Oh, yes.

Q. And at the bottom of the first page of this, there's a paragraph, quote, The enclosed projections showing revenues of over

6.5 million in five years are based upon modest expectations for the market provided the U.S. Supreme Court does not uphold the Louisiana Balanced Treatment Act. If by chance it should hold it, then you can throw out these projections. The nationwide market would be explosive.

Did you write that, sir?

A. I did.

Q. On or about the date it bears, January 30, 1987?

A. Yes.

Q. Of course, the Supreme Court did not uphold the Louisiana Balanced Treatment Act, did it?

A. No.

Q. Were your more modest projections of 6.5 million in five years realized?

A. This statement is that if they chose to publish it, that it could sell in those numbers.

Q. They chose not to publish it?

A. Right, right.

(Exhibit No. 27 was marked.)

MR. WILCOX: We're marking as Exhibit 27, FTE Document 3548 and 49.

Q. (BY MR. WILCOX) Again, this was produced by your counsel. Do you recognize this as efforts that you made on behalf of the Foundation to assess the market for Pandas?

A. I'm -- I'm sure -- I'm sure that's what it is. I am not

familiar with it. I'd have to read it.

Q. Incidentally, with respect to all of the documents produced by the Foundation to us, were they prepared or received in the ordinary course of business and maintained in the ordinary course of business?

A. I'm sorry, I'm not understanding your question.

MR. MATEER: And let -- let me just -- I think that's something that -- that we can -- we can work out. I mean, my only concern would be there are newspaper articles. Obviously, that's not a business record and you've proved them up differently. But -- but I would -- I would tell you, Mr. Wilcox -- and I'm sure Mr. Thompson over here -- I'm not -- we are not going to have a problem with letters and things like that. I mean, those are -- those are fine. And I just -- that kind of broad and global -- I know what you're trying to do. You're trying to speed things up.

MR. WILCOX: I'm trying to save time.

MR. MATEER: I know you, but I just want to tell, I -- we're not -- I mean, things that are letters -- I mean, obviously, those are business records. My concern about when you say "all the documents," all the documents are -- I mean, they are big pieces. There are -- things like that.

MR. WILCOX: Let me tell you what, I'll narrow it.

MR. MATEER: Yeah.

MR. WILCOX: I'm referring only -- and -- only to the correspondence, the market surveys that were prepared by the

Foundation and the drafts.

MR. MATEER: And I guess my -- my only -- my hesitancy is -- especially with drafts -- I mean, some were probably prepared by FTE. Some may have notes from other people. I mean, I'm just --

MR. WILCOX: Right. But even if they had notes from other people, it's because FTE sent them out for comment -- solicited the comment, brought it back in and made a judgment whether to use that comment or not. But in any event, that was part of the regular business purpose of the organization.

A. I believe you have all of the drafts.

MR. BOYLE: Could I ask for a short break?

MR. WILCOX: Sure.

THE VIDEOGRAPHER: We are off the record. The time is 1:55 p.m.

(Break was taken.)

(Exhibit Nos. 28-42 were marked.)

THE VIDEOGRAPHER: This is the beginning of Tape No. 3 in the deposition of Jon Buell. We are on the record. The time is 2:12 p.m.

MR. WILCOX: While we were off the record, the reporter marked as Exhibits 28 through 42, a series of documents being letters to or from the Foundation or documents prepared at the Foundation, and all maintained in its files in the regular course of business. Does that -- may we stipulate that these may

be authenticated as business records to that?

MR. MATEER: Yes, so stipulated.

MR. WILCOX: And is there any objection on your end, Richard?

MR. THOMPSON: (No response.)

MR. WILCOX: Hearing none, we'll proceed.

Q. (BY MR. WILCOX) I'd like to speak very generally for a few minutes about the Genesis of Biology and Origins and also Pandas. Is it correct that the basic concept of the book was conceived by you working primarily with Mr. Thaxton?

A. I would say that it was -- it was by Dr. Thaxton. He was the first one who began to talk about doing a biology textbook when -- when we completed The Mystery of Life's Origin.

Q. Okay. And am I correct that the thinking was pretty well along when Mr. Davis and Mr. Kenyon came on board?

A. If you could, please state that another way. I'm not sure if you're -- by "thinking," you're referring to the idea of doing a book, or if you're thinking about the content or the approach or -- I don't understand --

Q. Okay.

A. -- precisely the question.

Q. Let's see if we can sort of rehearse things generally. Mr. Thaxton thought it would be a good idea to have a book presenting the intelligent design or using creation as a placeholder concept in a low-key, nonconfrontational way that

avoided some of the culture wars's consequences of the more outspoken creationists texts. Was that the genesis of this?

A. You know, I would say that it was much more characterized by -- I mean, that may have been in his awareness. I don't know. It was much more characterized by the desire to do a high quality scholarly, yet accessible to the student biology -- treatment of biology.

Q. Okay. And am I correct that originally the idea was you would do a book that dealt with both evolution and with creationism design?

A. Not creationism. I mean --

Q. Not in the -- in the narrow sense of the National Academy of Sciences, but in the general sense of a book that countenanced there was a creator or designer who infused life with life?

A. No. I wouldn't agree to that. If you remove the word "creationism" and say "creation" because creation scientists were using the word "creationism" at that time even though it had not been defined by the National Academy and the Supreme Court. So no, that was not the general idea.

Q. Okay. Would you agree that in all of the early versions that we saw of the text, the author, Mr. Thaxton, was not too fussy about using the word creationism or creationist or creation as opposed to design or Designer or Intelligent Designer?

A. I -- no, I wouldn't agree with that. I'm not certain that he used the word "creationism" at all.

Q. Okay. With that correction, would you agree with the statement?

A. Would you state it then as corrected?

Q. In the early drafts of origins -- Biology and Origins, is that --

A. Yes, uh-huh.

Q. In the early drafts of Biology and Origins and indeed Pandas, Mr. Thaxton uses the words creation and creationist virtually synonymously with design, intelligent design or -- let me back up and do it again. This is clumsy.

If we revert back to Exhibit 8, Mr. Thaxton uses terms like dividing evolutionists and creationists and describes the theory as being -- creation is the theory that certain phenomena must be explained by intelligent causes; controversy over creation and evolution; Page 22, The Creationist Position.

He could as easily have used design or intelligent design in those places consistent with the way you and he were thinking; isn't that true?

A. Yes, uh-huh.

Q. Okay. And is it also true that the idea behind the book was Mr. Thaxton and you wanted a sensitive, exposition of the design or creation view along with the evolutionary view of life origins?

A. Like the other two authors of The Mystery of Life's Origin, Charles Thaxton was not a creationist as it was defined by

the authorities that we've cited, legal and scientific. He never has held that view. He was not in step with that view when he said, Let's do a biology textbook. None of those three authors, to my knowledge, ever held a recent creation view.

MR. WILCOX: May I have my question reread, and I move to strike the answer as nonresponsive.

(Requested Portion was Read.)

A. Yes, but the -- but the driving impetus was more that it be a scholarly work with scientific integrity than sensitive. Sensitivity was important, but it was secondary to something that was -- had -- had scientific integrity.

Q. (BY MR. WILCOX) Okay. And as it evolved, the book, instead of being one that gave space and energy to explaining evolution along with design, decided it would just become a supplemental book rather than a basal book?

A. We were advised -- and accepted the advice -- that we would not have the muscle to back a full basal biology textbook in a highly-charged, highly-politicized state level adoptions going against the likes of McGraw-Hill, Prentice Hall and so forth. So we accepted that advice, and we switched our strategy to doing a supplemental textbook.

Q. Who gave you that advice?

A. It came from a teacher in Wisconsin, and I honestly couldn't tell you the teacher's name.

Q. Was it a high school biology teacher?

A. It was a high school biology teacher.

Q. And it made sense to you?

A. Yes, it did.

Q. When you decided that, Okay, we'll do this book that focuses on the design or broadly understood creation view, did you and Mr. Thaxton talk about and think about, Well, okay, what are the subjects within that ambit that we will focus on? For example, the fossil record, blood --

A. We certainly talked about it, yes.

Q. Okay. And did you come up with the five or six or seven subjects that were ultimately explored?

A. Yes.

Q. And at what point did Kenyon and Davis get involved?

A. Are you asking at what point in the calendar, or at what point in this discussion about how this book would treat --

Q. The discussion of how the book would be structured, the architecture of it.

A. Right from the start. We -- we actually brought Kenyon and Davis -- we met with each of them in -- in Tampa and San Francisco. And then we brought them together and had a short strategy session of a few days to lay out the way the book would be developed.

Q. And approximately when was that?

A. You know, I'm guessing here, but I would say approximately in '84 -- possibly '85.

Q. Do you know -- do you remember if Mr. Thaxton sketched out and allocated responsibilities for who would be doing what parts of the book?

A. Yeah, we all worked that out together. It wasn't like handed down from Charles Thaxton, but yes, that was decided at that meeting.

Q. And was the structure decided whether it be the summary chapter or overview and then a summary of each excursion chapter, or does that come later?

A. I don't -- I don't remember. I don't remember.

Q. Am I correct in understanding that there was a different writer for the summary or introduction and the summaries of each excursion chapter from the principal authors?

A. The overview chapter in the first edition?

Q. Uh-huh.

A. Yes, there was.

Q. And did that person -- I don't remember her name. Do you remember her name?

A. Nancy Pearcey.

Q. Did she do the summary chapters or the overview chapter as well as the summary of each subsequent chapter?

A. No. She did the -- she did the overview chapter.

Q. Okay. Who did the summaries of each individual chapter?

A. If they were not done by the authors that did the chapter, I don't know. I mean, certainly, Charles would have felt

free to work substantively with the material. I worked superficially with it editorially. I mean, my first -- I don't recollect clearly, but my first guess would be that the authors themselves did the, you know, the summaries of their chapters.

Q. And Mr. Thaxton wrote the Note to Teachers; is that correct?

A. He wrote the Note to Teachers. He provided the framework for the book, yeah.

Q. And is it fair to say that you and he both were heavily involved in editing the chapters written by Messrs. Pearcey and Davis and Kenyon?

A. Yes. Although, we were heavily involved on very different levels.

Q. I appreciate that.

A. Charles and I kept reminding each other that I was not a scholar and he was the scholar.

Q. Did you ever obtain any legal advice as to the impact, if any, of Edwards v. Aguillard on Pandas?

A. I don't remember that specifically. It would not have been unlike us to seek that, but I don't remember specifically.

Q. And I think I asked you before, but I'm not sure: Did you ever discuss the implications of Edwards v. Aguillard on intelligent design with Mr. Dembski -- I'm sorry, not Mr. Dembski, Mr. Johnson?

A. Probably did, but I don't remember that.

Q. Is there any kind of nexus or affiliation between the FTE and the Discovery Institute?

A. No formal affiliation. There are -- there are friendships. Many of the fellows of the Discovery Institute were participants in our 1992 symposium at SMU, but there's no formal nexus, no.

Q. The nexus -- is there a nexus between FTE and Clymer & Musser, the law firm?

MR. MATEER: Are you asking do they represent him?

A. Are you asking do they represent us?

Q. (BY MR. WILCOX) Yes.

A. Yes.

Q. When did they start representing you?

A. Approximately -- recently.

Q. Recently, meaning within weeks, months, years?

A. Within -- you know, under normal circumstances, I should be able to answer that. But because of the court order to go through 25 years of documents in our little 1,000 square-foot office, it's like a tornado. We had to have volunteers. We -- we worked straight through the weekends, and I -- and -- and then there's been an unbelievable number of deadlines for affidavits, reading documents and so forth. So I -- I don't know the exact date.

Q. Let me state it differently.

Prior to the petition to intervene, had Clymer &

Musser done any legal work for the Foundation?

A. Prior to the motion to intervene?

Q. Okay.

A. Is that what you're -- I'm asking is that --

Q. Sure.

MR. MATEER: I think he's talking about after the application for intervention. Sorry.

Q. (BY MR. WILCOX) Had Clymer & Musser done any legal work for the Foundation before that?

A. Before that application?

Q. Yes.

A. No.

Q. Is there any nexus or relationship between the Foundation and Alliance Defense Fund?

A. Prior to this case?

Q. By this case -- let's say, prior to the application to intervene.

A. No.

Q. Is there any relationship between the Foundation and Liberty Legal Institute prior to this case?

A. No.

Q. Is there any relationship between the Foundation and John Angus Campbell prior to this case?

A. No.

Q. Am I correct that prior to this case, there has been a

nexus between the Foundation and William Dembski?

A. Yes.

Q. What is that nexus?

A. He's our academic editor.

Q. And has been since when?

A. He has been for -- for several years.

Q. Is there any relationship or nexus between the Foundation and Thomas More Law Center?

A. No.

Q. And never has been, to your knowledge?

A. No, huh-uh.

Q. What's the nexus between the Foundation and Stephen Meyer?

A. One of colleague and friendship -- long -- long-standing friendship.

Q. Okay. Has he ever been an academic editor or any kind of editor for the Foundation?

A. He was coauthor for a publication that we published.

Q. And I think we discovered -- or we talked earlier about the relationship between the Foundation and Haughton Publishing --

A. Uh-huh.

Q. -- and I take it there were two; one was the formal agreement between them under which they published Pandas, and that contained the monetary terms; is that right?

A. Yes, uh-huh.

Q. And then subsequently, there was an oral agreement between you and Haughton in connection with marketing the book, and you wrote letters under the letterhead of the Foundation?

A. I think the oral agreement that we would market the book predated the working out the financial arrangements.

Q. Okay.

A. I'd like to -- I'd like to add to that, that at least when we were using Flowers Marketing & Advertising, Haughton was paying for those -- for that advertising for those entry orders into the -- you know, for space ads and so forth.

Q. Okay. Who are the authors of Design of Life, as you understand it?

A. Kenyon, Davis, Dembski, Behe and Wells, Jonathan Wells.

Q. When did you learn that Mr. Dembski was going to be an expert witness for the Dover Area School Board in the Kitzmiller case?

A. An expert witness for them?

Q. (Moves head up and down.)

A. It would have been in the spring. It would have been April or May.

Q. Okay. And how did you learn?

A. I think that -- I think he told me. I'm not certain. I'm not certain, but I think he told me.

Q. In a phone call?

A. It probably was in a phone call.

Q. Do you have regular phone calls with Mr. Dembski?

A. We often have phone calls. They're not regular.

Q. When you say "often," would that mean a couple times a week, a couple times a month? I don't know what you mean by often.

A. Yeah. It would mean probably on the -- on the large scale, maybe weekly, close to weekly.

Q. Okay.

MR. WILCOX: Thank you. I have no other questions.

MR. MATEER: Dick, do you have some questions?

MR. THOMPSON: Are you -- is the -- the direct -- or cross-examination finished?

MR. MATEER: Yes. He's passed the witness.

MR. THOMPSON: Okay. Yes, I do have some questions.

EXAMINATION

BY MR. THOMPSON:

Q. Mr. Buell, as you already know, I represent the Dover Area School District and the Dover Area School District Board of Directors. Are you familiar with that relationship?

A. Yes.

Q. Okay. When is the first time that you had the opportunity to review the complaint against my clients that were filed in the District Court for the Middle District of Pennsylvania?

A. I don't remember the first time.

Q. Can you tell me whether it was in the year 2005?

A. Yes, uh-huh.

Q. Okay. Can you tell me whether it was in the early part of 2005, or is it -- has it been more recent?

A. Well, it's been more recent. It was sometime after you and I spoke by phone the first time.

Q. Okay. Have you ever read the biology curriculum press release that was dated November 19, 2004 and then reposted on the website of the Dover School Area District on December 14, 2004?

A. Not to my knowledge.

Q. Are you aware of any of the members of the Dover Area School District Board of Education?

A. Aware of them?

Q. Yes, know them by name?

A. No.

Q. Let me read to you the names of the Dover Area School District Board, and then I'm going to ask you whether you've had any communication with them. Alan Bonsel, that's B-O-N-S-E-L, did you have any communication with him at all?

A. No.

Q. William Buckingham, have you ever had any communication with Mr. Buckingham?

A. Not to my knowledge. Certainly, not in recent years.

Q. Ms. Heather Geesey, G-E-E-S-E-Y, have you had any -- have you ever had any communication with her?

A. No.

Q. Ms. Sheila Harkins, have you ever had any communication with her?

A. No, I haven't.

Q. Ms. Sherry Leber, L-E-B-E-R, have you ever had any communication with her?

A. No, I haven't.

Q. Mr. Eric Riddle, R-I-D-D-L-E, have you ever had any communication with him at all?

A. Not to my knowledge.

Q. Okay. Reverend Edward Rowand, R-O-W-A-N-D, have you ever had any communication with him?

A. Not to my knowledge.

Q. Mr. Ronald Short, S-H-O-R-T, have you ever had any communication with him?

A. Not to my knowledge.

Q. Ms. Angie Yingling, Y-I-N-G-L-I-N-G, have you ever had any communication with her?

A. No.

Q. Okay. And a more recent board member of the Dover Area School District, his name is James Cashman, C-A-S-H-M-A-N, have you ever had any communication with him?

A. Not to my knowledge.

Q. Okay. Those are the board members. Now, I'm going to ask you if you've had any communication with the superintendent of

the Dover Area School District, and his name is Dr. Richard Nelson?

A. No.

Q. Have you ever had any communication with the assistant superintendent of the Dover Area School District, and his name is Mr. Michael Baksa, B-A-K-S-A?

A. No, I haven't.

Q. Have you -- to the best of your knowledge, have you had any communication with any employee of the Dover Area School District?

A. No.

Q. Now, were you ever consulted by anyone connected with the Dover Area School District regarding the policy, which is the subject matter of this lawsuit? And I'm referring to the policy that's connected with the biology curriculum dated 11-19-04 and reposted on 12-14-04, which is the subject matter of this lawsuit.

A. Not to my knowledge.

Q. Did you at any time recommend to anyone connected with the Dover Area School Board, whether it was board members or a part of the administration, of the purchase of the book, Of Pandas and People?

A. The school board or persons connected with the Dover School District, is that --

Q. Correct.

A. Yeah. No. Well, let me say not to my knowledge.

Q. Right. Well, did you ever recommend the purchase of

the -- Of Pandas and People to any of the board members that I have named?

A. I don't believe so.

Q. Okay. And what about the assistant superintendent and the superintendent of the Dover Area School Boards and their names were -- or are Dr. Richard Nelson and Mr. Michael Baksa -- Baksa, did you ever recommend purchase of Of Pandas and People to those individuals?

A. No. I don't ever remember communicating with them or any of the people that you've named.

Q. Were you involved in any way with the drafting of the resolution dealing with the theory of intelligent design, which resolution was drafted -- or excuse me, adopted on October 18th, 2004?

A. By the Dover School Board?

Q. Correct.

A. No.

Q. Okay. Did you have any kind of input regarding the theory of intelligent design that was contained in the press release entitled, Board Press Release for Biology Curriculum, dated 11-19-04 and then reposted an 12-14-04?

A. No.

Q. To the best of your knowledge, has there been any kind of nexus between yourself and any member of the Dover Area School District Board of Education or administration?

A. No.

Q. To the best of your knowledge, has there been any kind of nexus between the Foundation for Thought and Ethics and the Dover Area School District or the board of education or the administration of that school district?

A. To the best of my knowledge, there has not. No one in my office remembers speaking with anyone from the district --

Q. And how are you --

A. -- or corresponding.

Q. -- able to make that statement?

A. Because very recently we -- we talked about it and we were just wondering, you know, how the school board obtained our books.

Q. And how many employees do you have?

A. Four.

Q. And you talked to all four employees?

A. No. Dembski is not in Dallas. We talked in our little staff coordination meeting, so that was three of us.

Q. Okay. And all -- and you talked to all three of them, and none of them had any awareness of communication between them and the Dover Area School District regarding the purchase of Pandas and People?

A. That's right.

Q. Okay.

MR. THOMPSON: All right. No further questions.

MR. WILCOX: Do you mind if I ask --

MR. MATEER: No. I think you're entitled to.

FURTHER EXAMINATION

BY MR. WILCOX:

Q. Can you sort your mailing list by zip code?

A. Oh, yes.

Q. So if I gave you a list of zip codes in York County, Pennsylvania or the Dover Area, you could tell us if you had people on your mailing list who were in that area?

A. Yes.

Q. And you could supply those names to your --

A. I think -- I think we could do that.

Q. You could supply those names to your counsel?

A. Yes.

MR. WILCOX: Okay. Thank you.

MR. MATEER: Is that all?

MR. WILCOX: That's all.

MR. MATEER: Dick, do you have anything else?

MR. THOMPSON: No. Thank you.

MR. MATEER: Okay. We're going to go off the record.

THE VIDEOGRAPHER: We're off the record. The time is 2:45 p.m.

(End of Proceedings.)

CORRECTIONS AND SIGNATURE

WITNESS: DATE OF DEPOSITION:

PAGE/LINE CORRECTION REASON FOR CHANGE

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I, JON BUELL, have read the foregoing deposition and hereby affix my signature that same is true and correct except as noted herein.

_____
JON BUELL
CA# 4:04-CV-2688

STATE OF TEXAS)
Subscribed and sworn to before me by the said witness, JON BUELL, on this the _____ day of _____, 2005.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: _____

STATE OF TEXAS)

I, Brandy Cooper, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that, pursuant to the agreement hereinbefore set forth, there came before me on the 8th day of July, A.D., 2005, at 8:51 a.m., at the offices of Mateer & Shaffer, located at 325 N. St. Paul Street, Suite 1300, in the City of Dallas, State of Texas, the following named person, to wit: JON BUELL, who was by me duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, of his knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon carefully examined upon his oath, and his examination was reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, same to be sworn to and subscribed by said witness before any Notary Public, pursuant to the agreement of the parties; and that the amount of time used by each party at the deposition is as follows:

Mr. Wilcox - 4 hours, 0 minutes,

Mr. Thompson - 0 hours, 9 minutes.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

I further certify that, before completion of the deposition,

the Deponent _____, and/or the Plaintiff/Defendant _____, did _____ did not _____ request to review the transcript.

In witness whereof, I have hereunto set my hand and affixed my seal this _____ day of _____, A.D., 2005.

_____
BRANDY COOPER, CSR
Esquire Deposition Services
Firm Registration No. 286
1700 Pacific Avenue, Suite 4750
Dallas, Texas 75202
Cert. No. 7211
Cert. Expires: 12/31/06
(214) 257-1436

Taxable Cost: $_____