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

TAMMY KITZMILLER, et al., Plaintiffs	Civil Action No. 04-CV-2688
vs.	(HON. JUDGE JONES)
DOVER AREA SCHOOL DISTRICT, and DOVER AREA SCHOOL DISTRICT BOARD OF DIRECTORS, Defendants	

Deposition of: MICHAEL BAKSA

Taken by : Plaintiffs

Date : September 22, 2005, 1:01 p.m.

Place : Pepper Hamilton LLP
200 One Keystone Plaza
Harrisburg, Pennsylvania

Before : Bethann M. Mulay, Notary Public
Registered Professional Reporter

APPEARANCES:

PEPPER HAMILTON LLP
By: ERIC J. ROTHSCHILD, ESQ.

For - Plaintiffs

THOMAS MORE LAW CENTER
By: RICHARD THOMPSON, ESQ.

For - Defendants

I N D E X

WITNESS

	Examination
MICHAEL BAKSA	
By Mr. Rothschild	3

EXHIBITS

Baksa Deposition Exhibit Number	Page Marked
1. Various Documents Bates Stamped 004001 through 004025	4
2. Handwritten Document Bates Stamped 004025	9
3. Document Bates Stamped 004024 Entitled Dover Area School District Planned Instruction/Curriculum Guide Part A	10
4. Documents Bates Stamped 000212 through 000213 Entitled Beyond the 'Evolution vs. Creation' Debate; Views on the Origin of the Universe and Life	28
5. Document Bates Stamped 003969 Entitled Dover Area School District Board/Administrative Retreat North Salem Faculty Room March 26, 2003 6:30-9:30 p.m.	29
6. Documents Bates Stamped PO1665 through PO1666 Entitled Dover Area School District Board/Administrative Retreat North Salem Faculty Room March 26, 2003 6:30 - 9:30 p.m.; Dover Area School District Board Issues	30
7. Documents Bates Stamped 003970 through 003971 Entitled Dover Area School District Board Issues March 26, 2003	31
8. Documents Bates Stamped 000944 through 000951 Memo to Michael Baksa, Larry Redding, Bertha Spahr from Trudy Peterman Dated 4/1/03	35

STIPULATION

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

MICHAEL BAKSA, called as a witness, having been duly sworn, testified as follows:

EXAMINATION

BY MR. ROTHSCHILD:

Q. Good afternoon, Mr. Baksa.

A. Good afternoon.

Q. Mr. Baksa, as you know, my name is Eric Rothschild. I represent the plaintiffs in the lawsuit captioned Kitzmiller, et al. versus Dover Area School District, et al., and I have taken your deposition once before in this litigation.

A. Yes.

Q. I gave you instructions about, you know, about the deposition process. Do you feel like you need those instructions again today?

A. No.

Q. This deposition will be thankfully much shorter than your prior one, but if you need to take a break at any time, please let me know, and I'm happy to do that. Have you read the transcript of your prior deposition in this case?

A. Yes.

Q. Is there anything that you said in that deposition that you would like to change on the record now?

A. No.

Q. Your deposition-- At your deposition today I'd like to show you some documents that were produced to us earlier this week. So let me start by doing that.

MR. ROTHSCHILD: If you can mark this collection of documents as Baksa 1.

(Baksa Deposition Exhibit #1 marked for identification)

BY MR. ROTHSCHILD:

Q. If you could flip through that group of documents which has been Bates stamped by defendants as 004001 through 004025 and let me know if you recognize those documents.

A. Yes.

Q. Are these documents that you personally provided

to counsel for the school district in this case?
A. Yes.
Q. And when did you provide it to them?
A. I believe last Thursday or Friday.
Q. So that would be September 14th or 15th, in that area?
A. Yes.
Q. Can you tell me why you had not provided these documents to counsel earlier in this litigation?
A. I found them during the process of cleaning up my office and going through my files. I had several piles and boxes around my office. And one of the boxes I had put the materials I received from workshops and conferences. And whenever I went to a conference, I would put it in that box.

When I went through that box last week, I found a stack of papers at the bottom of it. And going through those stack of papers, I found the documents that I then furnished to you. So I did not know of -- didn't know they were there the first time around.
Q. Is there anything that caused you to go look through this file or box, you know, whereas you had not before?

A. No. I was just cleaning.
Q. Were all of these documents, 4001 through 4025, found in the same collection?
A. No.
Q. So some of them were found in this workshop collection?
A. Yes.
Q. And there were others that were found in another location?
A. Yes.
Q. Going through the documents, could you tell me which ones were found in the workshop collection and identify that by Bates stamp range?
A. 004014.
Q. I'm sorry, just to interrupt for a second, these are ones that were from the workshop or were not?
A. Yes.
Q. Were, okay. Thank you.
A. 004015, 004016, 004017, 004018, 004019, 004020, 004021, 004022, 004023, 004024, and 004025.
Q. Were all found in the workshop file?
A. It's not a workshop file, no. There's-- It was a box that contained materials from conferences and other workshops. And at the bottom of that

box was an inch or so stack of papers. These were in between those papers.

Q. And where were the remaining documents?

A. They were in a file where I keep all of my conferences. All of the conferences I attend my secretary prepares a conference folder for me, and these were in that conference folder.

Q. And not in the box?

A. Correct.

Q. In a file cabinet?

A. Yes.

Q. And what caused you to locate these documents that haven't been located before in this litigation? And when I say these, I'm talking about now 4001 through 13 which were in a file cabinet.

A. Through the conversations with Pat Gillen when we were discussing the other documents, we talked about the retreat, the board retreat in March. And in discussing with him I was looking for the time I went to Messiah at the same time. And Mr. Gillen told me to get those documents and to produce them for him.

Q. Could you go through now page by page and tell me what each of these documents are starting

with 4001. If there's a document that has a multi-Bates stamp range, why don't you describe it that way and then tell me what the document is.

A. 004001 through 004002 is a letter from Messiah College to Dr. Nilsen making him aware of a workshop called "Creationism and the Law."

004003 through 004004 is an e-mail from Carol Steffy from Messiah College acknowledging my registration to attend the workshop on March 26th.

004005 again is a confirmation from Carol Steffy confirming my registration for the conference. 004006 is a request from my secretary to Carol Steffy of Messiah College to register me for the conference on March 26th.

004007 is a copy of an order for the book Evolution's Workshop: God and Science in the Galapagos Islands that my secretary ordered.

004008 is a -- looks like a confirmation from the organization that my secretary ordered the book from, Christianbook.com and has the order number of the purchase.

004009 looks like it's directions-- It looks like this probably might go with another

e-mail. It's simply directions for the conference on March 26.

004010 is again the confirmation from Carol Steffy that looks like it's part of the directions that might have been sent.

004011 is an e-mail from Christianbook.com to my secretary that just has a paragraph acknowledging the order. And I guess the purpose of it is not to spoil any surprise if it's a surprise present for somebody.

004012 through 004013 are my notes that I took on the March 26 conference. 004014 through 004023 are copies of an article.

004024 is a copy of the biology curriculum page that addresses evolution. 004025 is a copy of my notes that I had on 9/16/03 from a meeting with the science teachers.

MR. ROTHSCHILD: I'm going to mark two other documents that we just went through as separate exhibits, and I'd like to discuss them. First 004025 we'll mark that as Baksa 2.

(Baksa Deposition Exhibit #2 marked for identification)

BY MR. ROTHSCHILD:

Q. You described this as a meeting you had with the

science teachers. Can you tell me who was in attendance at the meeting?

A. Brian Ream, science teacher; Shane Miller, assistant principal at the high school; Mark Lentz, science teacher; Rob Eshbach, science teacher; and Bert Spahr, science teacher.

Q. Was anybody else in attendance, for example, school board members?

A. No.

Q. So this was just you and the science teachers that are listed here?

A. Yes.

MR. ROTHSCHILD: I'd like to now mark as Baksa 3 004024.

(Baksa Deposition Exhibit #3 marked for identification)

BY MR. ROTHSCHILD:

Q. You described this as a copy of the biology curriculum page that addresses evolution, correct?

A. Yes.

Q. There are handwritten notes on the document. Whose notes are those?

A. Those are mine.

Q. And what does it say?
A. Amy, please make copies of this for my science meeting with high school. Thanks.
Q. Do you know what meeting that was referring to?
A. No.
Q. Do you know whether it's the same meeting as is recorded in the notes on Baksa 2?
A. No.
Q. You don't know one way or the other?
A. No.
Q. When was this document created?
A. The document-- When I found the document among other papers, there was no date on the document. The papers that it was with, though, one of the papers was dated August 2003.
Q. And what kind of papers were those?
A. Agendas, memos, articles I might have had. It was just various pieces of information just from my working in the district.
Q. In your view not related to the issues and controversy in this litigation?
A. No. I did go through all the papers, and these were the only ones that I found that would be related.
Q. Who created this page that we're looking at,

Baksa 3?

A. When I first looked at this and now looking at it, I do not remember this or creating this. But for this to be -- to exist, I would be the only one that would produce something like this.

Q. And when you say you were the only person who would create something like that, may I take that to understand that you are the only person who prepares these documents of curriculum guides for the school?

A. Correct.

Q. Or for the school district?

A. Right.

Q. And my understanding, other than where you found this within your other documents, you don't have any recollection of what date it was created on?

A. That's correct.

Q. Do you know why this document was created?

A. No.

Q. Did you ever initiate an effort in Dover Area School District to have-- Let me withdraw that for a moment. This is a curriculum page that relates to the teaching of evolution, correct?

A. Yes.

Q. And at the bottom of the page it has a unit

content that says students will be able to demonstrate awareness of other theories of the origin of life including but not limited to creationism.

A. Correct.

Q. Did you ever initiate on your own in an effort to change the curriculum to include making students aware of other theories including creationism?

A. No.

Q. Based on your experience in preparing these curriculum guides and knowing how you would have acted in this process, can you reach any conclusions of why you would have prepared a curriculum guide which did include the teaching of creationism?

A. Well, I don't-- I don't remember creating the document. But seeing the document here, when I found the document, there was a note on from my secretary to copy this for a meeting with the high school teachers. And there were also attached to this document 10 copies. So that leads me to believe that-- I don't remember ever showing this document to anyone or discussing it with anyone. And seeing that the

copies were still attached to my note having copies, I don't believe that they were ever distributed to the science teachers or anyone else.

Q. But they were obviously created.

A. Yes.

Q. And I take it from your prior answer they were not created at your own personal initiative, correct?

A. I don't know that.

Q. Is it possible, Mr. Baksa, that you were instructed to prepare this curriculum item by a board member?

A. I don't remember any board member instructing me to put anything into the curriculum at this time. The only thing I remember prior to this is that Mr. Bonsell was curriculum chair at this time. We did have discussions about the presentation of Darwin and the textbook at that time.

And at some point I remember Dr. Nilsen giving me a page like this with a handwritten statement here for me to put into the curriculum. I remember that statement having origins of life in it. I did not remember that

statement having creationism in it.

Q. Do you still have that document with the handwriting?

A. No. That would have been discarded by my secretary after she would have typed it.

Q. Did Mr. -- Dr. Nilsen tell you who gave him that document?

A. No.

Q. Did you ask?

A. No.

Q. Did you recognize the handwriting on the document?

A. Well, Dr. Nilsen gave me a curriculum page document with his handwriting on.

Q. Did he say who had provided the content that he had put down in handwriting?

A. No.

Q. Was it your understanding that he was asking you to incorporate his handwritten comments into a curriculum page of this sort we're looking at here?

A. Yes.

Q. And the handwriting was on the very subject we have here, origins of life?

A. Yes.

Q. And did he tell you what he wanted you to do with the curriculum guide when he -- once it was created?

A. I don't remember Dr. Nilsen giving me specific instructions what to do with the new language. The normal course would be that I would draft language and then sit down with the teachers to present that for their review.

Q. Let's go back to Baksa 1. Mr. Baksa at 4014 begins this article from the magazine called Cresset, C-r-e-s-s-e-t.

A. Yes.

Q. Do you remember how that came into your possession?

A. I think Mr. Bonsell gave me the article.

Q. When did he give it to you?

A. That I don't know.

Q. Did he say anything when he gave it to you?

A. I don't-- I don't remember.

Q. Did you ever discuss the article with him?

A. That I don't remember either.

Q. Did you discuss it with anybody else?

A. I don't think so.

Q. Did you have an understanding of why he was giving you this article?

A. In my earlier conversations with Mr. Bonsell he did express concern about the treatment and presentation of Darwinism in our textbooks. And this article, when I originally got it, I kind of skimmed it, so I didn't have-- When I found it, I didn't have much recollection of what the article -- what the content was.

I did reread the article, and I could only-- I can only guess -- I don't remember Mr. Bonsell saying that -- but from the content and knowing his concerns, the article talks about kind of coming to grips with one's personal belief and the teachings of science.

Q. You refer to Mr. Bonsell's concerns. You had an understanding of what his concerns were?

A. He was concerned about the -- that the presentation of Darwin, specifically origins of life, he had concerns with that presentation in the current textbook.

Q. And did you understand what his concerns were?

A. That he thought that the theory of -- Darwin's theory that it was overstated, that it was presented as a fact and didn't allow any room for students to hold other possibilities.

Q. And you used the word earlier personal beliefs.

Was that part of his concerns, that it collided with people's personal beliefs?

A. I used personal beliefs?

Q. I believe you did. If you don't feel like you did, I--

A. I don't remember that.

Q. Was it one of Mr.-- Was it part of Mr. Bonsell's concerns that the teaching of evolution as it was being done in Dover would conflict with students' personal beliefs?

MR. THOMPSON: I'm going to object that you're going I think away from the purpose of this deposition, and that is to explore the various documents that we have and how he got them but not into, you know, what his conjecture is about personal beliefs of other persons.

MR. ROTHSCHILD: These documents relate to this controversy including particular board members. They should have been provided to us earlier. I'm not suggesting any bad faith by Mr. Baksa at all. But had we had these documents as well as other untimely produced documents, he would have been deposed about them. And it's certainly within my right not to simply ask where did you find these documents

but where do they fit within this controversy, so I'm going to press my--

MR. THOMPSON: We just took the deposition of Barrie Callahan who also just recently found some documents. I think that's a part of the human experience, not being able to locate all documents relating to a particular subject.

He has already indicated that Mr. Bonsell gave him this particular article, and I think that when you start asking him questions beyond the article into other speculations about Mr. Bonsell, I think it's far afield. So I'll object to that on that basis, but I'm not going to direct him not to answer it.

MR. ROTHSCHILD: Thank you.

BY MR. ROTHSCHILD:

Q. You may answer.

A. Can you repeat that question.

MR. ROTHSCHILD: Can you read back the question, please.

(The court reporter read back the referred-to portion of the testimony.)

BY MR. ROTHSCHILD:

Q. I think Mr. Baksa did not agree that he had used those terms, so I used them myself in my

question which is, was part -- was it your understanding that part of Mr. Bonsell's concern was that evolution conflicted with some students' personal beliefs?

A. From my conversations with Mr. Bonsell, he expressed his concerns to me that the presentation of Darwin in the textbook would leave students to a certain understanding of evolution which may differ from ones that they or their families may hold. And he was concerned about that.

Q. And when you're talking about ones that their families held, were those personal religious beliefs?

A. That I wouldn't know.

Q. You had no understanding about that?

A. Right.

Q. But you did understand that he was worried that the teaching of evolution would conflict with beliefs that students and their families held?

A. Yes.

Q. If you could turn to Page 4007. This is the document indicating that you ordered a book called Evolution's Workshop: God and Science in the Galapagos Islands?

A. Yes.
Q. And the following page indicates that that was ordered from Christian Book Distributors?
A. Yes.
Q. Why did you order this book?
A. I believe the speaker -- this is one of the books the speaker authored, and coming away from that workshop then having this information, I ordered the book to see his treatment of the Galapagos and evolution.
Q. When we're talking about the speaker, we're talking about Edward Larson?
A. I believe that's correct.
Q. And just to clarify the record, and I understand why your recollection wouldn't be perfect, it looks like you actually ordered the book on or before March 4th, 2003 which would actually have been before the conference. Is that right?
A. Okay.
Q. Do you agree that that's correct?
A. I don't remember when the book was ordered.
Q. But looking at 4008, does that indicate that the order must have occurred on March 4th, 2003?
A. Yes.
Q. That was actually before the conference?

A. Yes.
Q. Did you read the book?
A. Parts of it, not all of it.
Q. Let's turn to Page 4012. These are your notes from the Messiah College conference that you attended on March 26th?
A. Correct.
Q. And up at the top it looks like there's the name Ted Davis. Is that correct?
A. Yes.
Q. And who is he?
A. I believe Ted Davis is affiliated with Messiah.
Q. Then am I correct in understanding from your notes that most of the conference was a lecture from Edward Larson?
A. Yes.
Q. And in it he discussed the history of the teaching -- the history of the issue of creationism?
A. Evolution.
Q. And also creationism?
A. I don't remember that. I'm looking at my notes to see if-- He mentioned creationism here, but I don't remember him speaking-- From what I remember of the conference, he spent a great

deal of it simply giving the historical history of evolution and the debates that arose and some of the opinions and some of the major works that addressed those opinions during different periods of history. It was more that than it was speaking directly about creationism.

Q. Summarizing your notes here, it looks like there was some discussion about Darwin, Darwin's theory?

A. Yes.

Q. And then there was also discussion about what's commonly referred to as the Scopes monkey trial?

A. Yes.

Q. Then it looks like pretty far down the page you have the word second phase?

A. Yes.

Q. And has the date 1961 and lists the Genesis flood and explanation of six day creation or within last 10,000 years. Sitting here today, do you remember this being part of the discussion?

A. Yes.

Q. And then it looks like below that it says, today?

A. Yes.

Q. And then it says-- Why don't you tell me what's written next to 10 years -- next to today, excuse me.

A. Next to today is heading Term and under it Young Earth Creationists and then another heading Term and Common Ancestry and then Intelligent Design. All three of those are underlined.

Q. And can you tell me what's in that paragraph below the words Young Earth Creationists?

A. In parentheses?

Q. Yes.

A. Dinosaurs were on Noah's ark.

Q. Am I correct that he's associating that with the young earth creationism?

A. I believe so.

Q. Just to be clear, we have-- It says, second phase. Second phase of what?

A. Of the controversy of evolution, I believe.

Q. When you say the controversy of evolution, what controversy?

A. That challenges that there may be other theories other than Darwin's.

Q. So second phase includes the Genesis flood, right?

A. That's what it looks like from my notes.

Q. And then for today there's actually -- looks like there's words above the terms you just read that look to me like they should be associated with today as opposed to second phase. Could you read those words and tell me where you think they fit in your notes?

A. It says, 10 years later balanced education struck down, Philip Johnson.

Q. And looking at those words today, what do you believe you were trying to record?

A. I could only-- I could only guess from my notes, but I would think what that means is that anything being presented other than Darwin's theory of evolution wouldn't hold.

Q. And when you looked at -- you have the word second phase and today, did you understand that to be sort of the second phase of creationism?

A. No, the second phase of other theories other than Darwin's gaining interest.

Q. Where you have today Young Earth Creationists was one of the challenges?

A. Well, I thought these-- I think these represented as three prominent schools of thought today besides Darwin's.

Q. And if we could turn over to the next page. The

page we were just reviewing was 004012. Now turning to 004013, the second page of the notes, can you tell me what's written at the very top of the document?

A. Creationism and the law.

Q. Was there a particular person who discussed creationism and the law or that's the whole seminar?

A. That's the whole seminar.

Q. And then it looks like there's notes that say from Ted Davis. Is this recording things that were said by Ted Davis at Messiah College?

A. I don't believe so. Ted Davis was affiliated. And at the end of the presentation by Larson he spoke a little bit in general and then opened it up for questions. So underneath Ted Davis I remember that coming from a teacher that was kind of in the back of the room. And that was their comment to the group there, the audience.

Q. Can you just read what was said that you have recorded here?

A. At the school level we do not teach theories and all opposing arguments for any area like gravity, germ theory, et cetera. We are not prepared to do that and would be confusing to

students. We teach prevailing theories that to date work best for scientists to explain things.

Q. And after that?

A. Phil Johnson - attack on evolution - common descent. To National Science Teachers Association - position on evolution.

Q. This conference took place on March 26, correct?

A. Yes.

Q. And I think you actually observed in one of your earlier answers that that happened to be the same day as a board retreat?

A. Yes.

Q. Did you find this session at Messiah College pretty informative?

A. Yes.

Q. It taught you information about the evolution controversy and issues like creationism that maybe you were less aware of before then?

A. Yeah. I wasn't aware of the history of it.

Q. And then you attended the March 26, 2003 board retreat in the evening, correct?

A. Correct.

Q. And that's your first -- the first board retreat you had attended as an assistant superintendent in Dover?

A. Yes.

Q. Let me just ask-- Before I ask you something about that, let me just show you one other document, and we'll call this Baksa 4.

MR. ROTHSCHILD: And I'll also note for the record that I believe at trial it will be Plaintiff's Exhibit 149.

(Baksa Deposition Exhibit #4 marked for identification)

BY MR. ROTHSCHILD:

Q. Mr. Baksa, look at these documents. Are these documents that were handed out at the Messiah College meeting?

A. I don't know that. I didn't have these in my folder from the workshop.

Q. No. These are documents that have been previously produced to us. We understand that the notes -- the handwritten notes on each page of the document are Jennifer Miller's saying given to me by Baksa spring 2004, and I'm just wondering if you have any familiarity with these documents.

A. No. I don't-- I don't remember seeing either of these prior to them being presented here.

Q. In the deposition process?

A. Yes.
Q. So you don't know that they were handed out at the Messiah College event?
A. Right.
Q. Is it possible they were?
A. I don't remember there being any handouts whatsoever there. There wasn't even an agenda.
Q. Mr. Baksa, I'm going to show you a document that was produced very recently by the district.
MR. ROTHSCHILD: We'll mark that as Baksa 5. It's Bates stamped 3969, and I believe Plaintiff's Trial Exhibit 24.
(Baksa Deposition Exhibit #5 marked for identification)
BY MR. ROTHSCHILD:
Q. Do you recognize Baksa 5?
A. Yes.
Q. That's an agenda for the board retreat on March 26th?
A. Yes.
Q. Was this something you remember receiving at the board retreat?
A. Yes.
MR. ROTHSCHILD: I'm going to mark as Baksa 6 a document Bates stamped P01665 through

1666.

(Baksa Deposition Exhibit #6 marked for identification)

BY MR. ROTHSCHILD:

Q. This is a document that was located recently by Barrie Callahan and produced to defendants. The handwriting on it is her own, and I wouldn't have expected you to have seen that prior to today.

But the original of that document was actually a double-sided document with the board agenda on one page and on the back Dover Area School District Board Issues January 9th, 2002. Do you remember receiving the agenda in that form?

A. I remember the front, but I honestly don't remember the back.

Q. Mr. Baksa, at the March 26, 2003-- Let me just withdraw that for a moment. The board issues dated January 9, 2002, that date precedes your being assistant superintendent at Dover, correct?

A. Yes.

Q. Now, on March 26, 2003 if you look at the agenda which we have I believe marked Baksa 5, it

indicates the subject of board issues?

A. Yes.

Q. And at the March 26, 2003 meeting was there again a session for the board to -- board members to identify their particular issues?

A. Yes.

Q. And describe for me how that was communicated in that retreat.

A. Dr. Nilsen facilitated the retreat, and after Item Number 3 and we got to Item Number 4, Dr. Nilsen simply would go around the table to each board member and ask them if they have any concerns or questions for any of the administrators at the table.

Q. As this is going on, are you taking notes?

A. I usually did.

Q. Would you preserve those notes?

A. No.

MR. ROTHSCHILD: I'm going to mark as Baksa 7 a document Bates stamped 003970 through 71 which will be trial Exhibit P-25 also recently produced by defendants.

(Baksa Deposition Exhibit #7 marked for identification)

BY MR. ROTHSCHILD:

Q. Do you recognize this document, Mr. Baksa?
A. Both pages?
Q. Yes.
A. Yes.
Q. Where have you seen this before?
A. Dr. Nilsen after the retreat, we hold administrative meetings, meetings with all the supervisors and administrators in the district. Then I don't know for sure, but typically that would be a setting in which he would distribute information like this as a summary of the retreat.
Q. And so this is something he distributed to you?
A. I would guess so.
Q. And do you understand these to reflect Dr. Nilsen's notes about what the board issues were?
A. Yes.
Q. And, for example, for Mr. Wenrich, one of his issues was K through 12 discipline consistency?
A. Yes.
Q. Mr. Brown wanted to emphasize communication?
A. Yes.
Q. And Mr. Bonsell listed creationism as one of his issues, correct?

A. Yes.
Q. And that's what he said, didn't he?
A. I don't remember Mr. Bonsell talking about creationism at this meeting.
Q. When you received this from Dr. Nilsen, did you tell him he needed to correct anything on this document?
A. No.
Q. So let me just summarize here. You on March 26th had attended a conference in which the issue of creationism was discussed, correct?
A. Yes.
Q. You went to this meeting I assume with creationism on your brain, correct? You went to the retreat with creationism on your brain?
A. I went to the retreat after the conference.
Q. Surely the issue of evolution and creation was prominent in your mind having just spent several hours hearing about it?
A. Yes.
Q. And Dr. Nilsen-- The board articulated their issues, correct?
A. Yes.
Q. And following the retreat, Dr. Nilsen circulated this document which describes the issues that

the board had identified, correct?
A. Yes.
Q. And under Mr. Bonsell's list was creationism, correct?
A. Yes.
Q. An issue you had just been recently sensitized to, correct?
A. Yes.
Q. And you did not tell Dr. Nilsen, you need to correct this, this isn't what Mr. Bonsell said?
A. No. These are his notes.
Q. And you didn't say, you know, Dr. Nilsen, this isn't my recollection?
A. No.
Q. And shortly after the retreat, you went and talked to Mrs. Spahr, didn't you?
A. Yes.
Q. And one of the things you did was give her a heads up as the head of the science department about the kind of issues the board was discussing relating to science curriculum, correct?
A. Mr. Bonsell -- Mr. Bonsell's concerns.
Q. You went directly to Mrs. Spahr and said Mr. Bonsell has got some concerns, let me tell

you about them?

A. Yes.

Q. And you were doing that as an administrator really trying to help out the head of the science department in doing her job, correct?

A. Yes.

Q. Making her aware of what the board's views were, correct?

A. Yes.

Q. And shortly after that conversation with Mrs. Spahr you received this document, didn't you?

MR. ROTHSCHILD: We'll mark this Baksa 8. It will be Plaintiff's Trial Exhibit 26 Bates stamped 00944 through 951.

(Baksa Deposition Exhibit #8 marked for identification)

MR. THOMPSON: I'm going to object here again. This is going beyond what I think was the purview of reopening the deposition. This is bringing into the deposition documents that you've already been aware of that already have been provided to the various parties. And you are now going way beyond what I believe was the reason for reopening this case. You're just

getting another crack at cross-examining Mr. Baksa on the general issues here.

MR. ROTHSCHILD: You have produced documents both recently from Mr. Baksa and shortly before that from Dr. Nilsen in the same time period relating to the same issues which I did not have the benefit of when I examined Mr. Baksa about this document.

I again do not impute any ill will in terms of when we got those documents. But had I had them collectively, it would have been a quite different deposition, and I'm going to continue in this light. I understand you have an objection.

BY MR. ROTHSCHILD:

Q. So, Mr. Baksa, after talking to Mrs. Spahr and telling her that Mr. Bonsell had concerns that affected the science curriculum, you received shortly after that this memo from Trudy Peterman, correct?

A. Yes.

Q. And it's dated April 1st, 2003, correct?

A. Yes.

Q. And the subject matter is Creationism As It Relates to the Approved School Board Biology I

Curriculum, correct?

A. Yes.

Q. In that document Ms. Peterman reports that Mrs. Spahr said that you told her that there is a board member who wants to teach 50 percent creationism, correct? That's what it says?

A. It says that a board member wanted creationism taught in biology classes.

Q. And this--

A. And then lower it says that this board member wanted 50 percent of the topic of evolution to involve the teaching of creationism.

Q. And when you received this document, you never went to Mrs. Spahr and said, wait a minute, Bertha, you got this wrong, that's not what I told you?

A. It's not Mrs. Spahr saying-- I understood this document to come from Dr. Peterman. I don't even know that-- I wasn't thinking of Mrs. Spahr.

Q. Well, Mr. Baksa, Ms. Peterman is only reporting what Mrs. Spahr told her, right?

A. Yes.

Q. So if somebody got the conversation wrong that you had, it was Mrs. Spahr, correct?

A. I understood this, as I talked to before, that Dr. Peterman was very quick to react to situations which didn't require that level of concern or anxiety. My conversation with Mrs. Spahr I don't remember talking to her about creationism. I remember talking to Mrs. Spahr about Mr. Bonsell now saying he wanted a 50-50 split. I didn't know what that meant, what it was going to be split with.

And I just stopped in at the end of the day, went up to her room to talk to her just to give her a heads up that this issue is still out there, we may need to do something in the future to resolve it.

So when I received this memo that talks about the teaching of creationism, nobody had ever talked to me about teaching creationism. I don't remember saying that to Mrs. Spahr at all, and no board member or other members were at that time pushing for creationism to be taught 50-50 side by side in the curriculum.

So I reacted to this memo. To me it was very much in light of Dr. Peterman's prior behavior where she -- typically the sky is falling when you simply mention something. And

it was a heads up. It was very low key. I think this memo paints a situation that just didn't exist as far as the urgency of any board members wanting creationism taught in the biology curriculum.

Q. So let me get this right. We get the list of board issues from Dr. Nilsen that lists creationism under Mr. Bonsell's name, and you don't tell Dr. Nilsen he's got to correct that?

A. I wouldn't tell Dr. Nilsen he has to correct his own notes.

Q. You didn't even suggest to him that he may have heard that wrong?

A. No. If somebody is taking notes of a recollection of the -- of what they heard, because I didn't hear it doesn't mean that it didn't happen. So I wouldn't on any of those items say that they didn't say that. Obviously Dr. Nilsen heard that and put it down there. Why would I question that? I wouldn't.

Q. You knew that the issue of creationism based on having just attended the Messiah College was a pretty important and sensitive issue, didn't you?

A. Dr. Nilsen asked me to go to the March 26

conference which dealt with creationism and the law and I later found out dealt with the history of creationism. I don't know why he asked me to go to that. I did not ask him. Certainly we were involved in science curriculum at the time, and evolution is historically a controversial topic. So I could only guess that being in the gear for the curriculum review cycle for science and this being a part of it and knowing that we did already have some concerns about the presentation of Darwin, he would send me to that conference.

Q. And in that conference part of what you learned is creationism has some legal implications, correct?

A. I don't remember-- I did-- After that-- One of the things I heard at that conference was that Ted Davis and Messiah were advocating an open discussion of other theories in the classroom including the -- and listed those three prominent today, those three alternative theories there. They were advocating that. They couldn't-- Part of the discussion with the audience is that they couldn't understand why schools -- public schools resist having that

conversation in the classroom.

Shortly after-- I don't remember them talking about-- I didn't come away with any clear legal opinion about teaching creationism. They talked more about that being a discussion in the classroom in science class that they should be at least able to discuss that.

But what I did do is I did at one point because Mrs. Spahr was concerned that board members would eventually-- Their concern with the curriculum was that the board members might require her science department to teach creationism.

And speaking to Mrs. Spahr, I told her that I would get a legal opinion. I did from our solicitor. And that opinion derived to us at the beginning of October 2003 specifically addressing the legality of teaching creationism.

Q. And even before that, Mr. Baksa, at this Messiah conference your notes indicate 1968 anti-evolution law struck down, 10 years later balanced education struck down. There was legal discussion, wasn't there?

A. My notes seem to indicate that. I don't remember a lot of it, though.

Q. But you agree your notes indicate that?
A. Yes.
Q. And for whatever your reasons, you certainly did not say to Dr. Nilsen, creationism? Nobody said that, you didn't say that when you got the list of board issues?
A. Correct.
Q. And then you get this memo from Dr. Peterman, and I understand your feelings about Dr. Peterman, but you didn't go to Dr. Peterman or Mrs. Spahr and say, ladies, this is all wrong, that's not what I told Bertha?
A. Correct.
Q. Then we get to the fall of 2003, and Mr. Bonsell is still concerned about the teaching of evolution, correct?
A. I had set up in the fall of 2003 a meeting with the science teachers and Mr. Bonsell so that he could hear firsthand from the science teachers exactly how they are presenting Darwin and the theory of evolution in the classroom.
Q. Who initiated that meeting?
A. I did.
Q. And you did that because you understood that Mr. Bonsell had concerns about the teaching of

evolution including whether it conflicted with personal beliefs held by individual students and their families, correct?

A. Yes.

Q. And around this same time you got the handwritten notes from Dr. Nilsen which resulted in the change to the biology curriculum or at least a draft change that we find on Page 4024. I believe that's Baksa 3, correct?

A. When Dr. Nilsen actually gave me his handwritten notes on the curriculum, I don't remember that. In looking at the language, if we had a concern, what might happen is a draft would be created but not necessarily anything done with that draft. Nothing would appear finalized in a curriculum like this until it had been reviewed with the teachers and approved by the board.

And I would not have brought any language like this forward to the teachers unless it was language that was there that was addressing some concerns of a board member or board members and they were insisting that a curriculum piece be there because this was never distributed. I don't remember any board members at this time insisting that a curriculum piece be inserted

into the curriculum for approval.

So when Dr. Nilsen might have originally given me some language to the point of the development of this, I'm not sure because nothing was done with that, and there were no meetings held with that, and I didn't share that with anyone. I'm not sure when he originally would have given me some language like that.

Q. But you-- I mean, the conclusion you're reaching is the change that you made here that's reflected on Baksa 3 was as a result of the handwritten markups that Dr. Nilsen gave you?

A. Yes.

Q. So this change -- this possible change to the curriculum which includes the making students aware of creationism was either Dr. Nilsen's idea or somebody who asked Dr. Nilsen to do that, correct?

MR. THOMPSON: Objection, speculation, calls for speculation.

BY MR. ROTHSCHILD:

Q. Did you have an understanding of whether this was Dr. Nilsen's idea?

A. I remember Dr. Nilsen having handwritten notes about the origins of life. I don't remember

saying creationism or-- And I don't remember any one person saying creationism needs to be put in there.

Q. One thing you know is it was not your idea to put creationism in there?

A. I don't even know that. I may have done that.

Q. You have no memory whatsoever?

A. I just don't remember doing it.

Q. Mr. Baksa, you've seen all the documents we have here, the board issues, Trudy Peterman's memo, this curriculum guide, creationism, creationism, creationism. Can you honestly say here that you have no idea where this concept of creationism was coming from, that it was just appearing words on a page that nobody ever said?

MR. THOMPSON: Objection, argumentative.

BY MR. ROTHSCHILD:

Q. You may answer.

A. I could tell you from the beginning I believe in my discussions with the science teachers in expressing concerns about Darwin and the theory of evolution, I could tell you that from the beginning I believe the understanding on the science teachers is we were talking about creationism.

I don't think they-- I don't think they-- I think that was the first thing that came into their minds. So it doesn't surprise me that-- I mean, even later when the language was referring to intelligent design, I still feel the science teachers equated that with creationism.

So I believe from the standpoint of a board member having any concern with evolution and wanting something else and the science teachers' personal knowledge of the board members that their understanding was that it was creationism that we were talking about. So that doesn't surprise me.

Q. Mr. Baksa, could you turn to the board issues?

A. What number is that?

Q. It's Exhibit Baksa 7. The word creationism on this page does not spring from the minds of science teachers, does it? They weren't at the board retreat, were they?

A. No.

Q. So that's not the science teachers misinterpreting whether someone is saying creationism, correct?

A. Correct.

Q. And if we look at Baksa 3, the curriculum guide, that wasn't written by the science teachers either, was it?

A. Correct.

Q. The word creationism didn't come from them?

A. Correct.

Q. So let's stop talking about the science teachers and answer my question which is, you understood this was coming from the board, didn't you?

A. No.

MR. THOMPSON: Well, you know, I think the record should reflect you're raising your voice, and you're becoming very argumentative, and I object to that kind of treatment of this witness. So if you want to ask a question without going through the--

BY MR. ROTHSCHILD:

Q. Same question, voice softer.

MR. THOMPSON: Not only that, not argumentative. Ask him the question.

BY MR. ROTHSCHILD:

Q. Mr. Baksa, you understood that Mr. Bonsell wanted creationism taught at Dover High School, didn't you?

A. No.

Q. In the face of all of these documents indicating creationism, Ms. Peterman's memo, the board issues, this curriculum guide, it's still your testimony that Mr. Bonsell said nothing about creationism?

A. I don't remember Mr. Bonsell specifically saying creationism. I remember him having concerns about the origins of life as might be interpreted by, taught by Darwin's theory of evolution.

Q. You believe he did not say creationism or you just don't remember?

A. I just don't remember him saying it.

MR. ROTHSCHILD: I have no further questions for Mr. Baksa, but I do have further questions for Mr. Nilsen. He's going to have to come in and answer questions about the genesis of 4024 which we've marked as Baksa 3 today. So, Counsel, could you please advise when he could appear and answer questions about this document?

MR. THOMPSON: First of all, I don't know if you're going to get another chance at Mr. Nilsen or Superintendent Nilsen. This would be what, would be his fourth deposition?

MR. ROTHSCHILD: It would be the first one in which I am able to ask him questions about the document Bates stamped 004024 including about what Mr. Baksa has represented today about the genesis of that document.

MR. THOMPSON: I will consult with the other attorneys. I can't, you know, guarantee that that would occur. Maybe it would happen, or maybe it wouldn't happen. You know, this could go on and on and on. We could start a whole round of new depositions on the basis that you just found this document, now you want to continue to ask every witness these questions over again. I mean, that's the concern I have.

MR. ROTHSCHILD: I didn't just find this document. You just found this document. It's obviously an important document as it relates to the issues in this case. I'm requesting an answer by close of business today. Otherwise, we will file a motion with the judge to reopen Dr. Nilsen's deposition.

MR. THOMPSON: I don't know that you will get that. You certainly can ask the Court.

MR. ROTHSCHILD: Thank you.

(The deposition concluded at 2:08 p.m.)

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF YORK :

I, Bethann M. Mulay, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of York, do hereby certify that the foregoing deposition was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

MICHAEL BAKSA

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for or related to any of the parties to the foregoing cause, or employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at York, Pennsylvania this 22nd day of September, 2005.

_____

Bethann M. Mulay
Registered Professional Reporter
Notary Public

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.