

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

.
TAMMY KITZMILLER, et al., . Civil Action No.
Plaintiffs . 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 P01665 through P01666 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

Exam./Rothschild - Baksa

- 1 Q. This deposition will be thankfully much shorter
2 than your prior one, but if you need to take a
3 break at any time, please let me know, and I'm
4 happy to do that. Have you read the transcript
5 of your prior deposition in this case?
- 6 A. Yes.
- 7 Q. Is there anything that you said in that
8 deposition that you would like to change on the
9 record now?
- 10 A. No.
- 11 Q. Your deposition-- At your deposition today I'd
12 like to show you some documents that were
13 produced to us earlier this week. So let me
14 start by doing that.
- 15 MR. ROTHSCHILD: If you can mark this
16 collection of documents as Baksa 1.
17 (Baksa Deposition Exhibit #1 marked for
18 identification)
- 19 BY MR. ROTHSCHILD:
- 20 Q. If you could flip through that group of
21 documents which has been Bates stamped by
22 defendants as 004001 through 004025 and let me
23 know if you recognize those documents.
- 24 A. Yes.
- 25 Q. Are these documents that you personally provided

Exam./Rothschild - Baksa

1 to counsel for the school district in this case?

2 A. Yes.

3 Q. And when did you provide it to them?

4 A. I believe last Thursday or Friday.

5 Q. So that would be September 14th or 15th, in that
6 area?

7 A. Yes.

8 Q. Can you tell me why you had not provided these
9 documents to counsel earlier in this litigation?

10 A. I found them during the process of cleaning up
11 my office and going through my files. I had
12 several piles and boxes around my office. And
13 one of the boxes I had put the materials I
14 received from workshops and conferences. And
15 whenever I went to a conference, I would put it
16 in that box.

17 When I went through that box last week, I
18 found a stack of papers at the bottom of it.
19 And going through those stack of papers, I found
20 the documents that I then furnished to you. So
21 I did not know of -- didn't know they were there
22 the first time around.

23 Q. Is there anything that caused you to go look
24 through this file or box, you know, whereas you
25 had not before?

Exam./Rothschild - Baksa

- 1 A. No. I was just cleaning.
- 2 Q. Were all of these documents, 4001 through 4025,
3 found in the same collection?
- 4 A. No.
- 5 Q. So some of them were found in this workshop
6 collection?
- 7 A. Yes.
- 8 Q. And there were others that were found in another
9 location?
- 10 A. Yes.
- 11 Q. Going through the documents, could you tell me
12 which ones were found in the workshop collection
13 and identify that by Bates stamp range?
- 14 A. 004014.
- 15 Q. I'm sorry, just to interrupt for a second, these
16 are ones that were from the workshop or were
17 not?
- 18 A. Yes.
- 19 Q. Were, okay. Thank you.
- 20 A. 004015, 004016, 004017, 004018, 004019, 004020,
21 004021, 004022, 004023, 004024, and 004025.
- 22 Q. Were all found in the workshop file?
- 23 A. It's not a workshop file, no. There's-- It was
24 a box that contained materials from conferences
25 and other workshops. And at the bottom of that

Exam./Rothschild - Baksa

- 1 box was an inch or so stack of papers. These
2 were in between those papers.
- 3 Q. And where were the remaining documents?
- 4 A. They were in a file where I keep all of my
5 conferences. All of the conferences I attend my
6 secretary prepares a conference folder for me,
7 and these were in that conference folder.
- 8 Q. And not in the box?
- 9 A. Correct.
- 10 Q. In a file cabinet?
- 11 A. Yes.
- 12 Q. And what caused you to locate these documents
13 that haven't been located before in this
14 litigation? And when I say these, I'm talking
15 about now 4001 through 13 which were in a file
16 cabinet.
- 17 A. Through the conversations with Pat Gillen when
18 we were discussing the other documents, we
19 talked about the retreat, the board retreat in
20 March. And in discussing with him I was looking
21 for the time I went to Messiah at the same time.
22 And Mr. Gillen told me to get those documents
23 and to produce them for him.
- 24 Q. Could you go through now page by page and tell
25 me what each of these documents are starting

Exam./Rothschild - Baksa

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

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

8 004003 through 004004 is an e-mail from
9 Carol Steffy from Messiah College acknowledging
10 my registration to attend the workshop on
11 March 26th.

12 004005 again is a confirmation from Carol
13 Steffy confirming my registration for the
14 conference. 004006 is a request from my
15 secretary to Carol Steffy of Messiah College to
16 register me for the conference on March 26th.

17 004007 is a copy of an order for the book
18 Evolution's Workshop: God and Science in the
19 Galapagos Islands that my secretary ordered.

20 004008 is a -- looks like a confirmation
21 from the organization that my secretary ordered
22 the book from, Christianbook.com and has the
23 order number of the purchase.

24 004009 looks like it's directions-- It
25 looks like this probably might go with another

Exam./Rothschild - Baksa

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

3 004010 is again the confirmation from Carol
4 Steffy that looks like it's part of the
5 directions that might have been sent.

6 004011 is an e-mail from Christianbook.com
7 to my secretary that just has a paragraph
8 acknowledging the order. And I guess the
9 purpose of it is not to spoil any surprise if
10 it's a surprise present for somebody.

11 004012 through 004013 are my notes that I
12 took on the March 26 conference. 004014 through
13 004023 are copies of an article.

14 004024 is a copy of the biology curriculum
15 page that addresses evolution. 004025 is a copy
16 of my notes that I had on 9/16/03 from a meeting
17 with the science teachers.

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

22 (Baksa Deposition Exhibit #2 marked for
23 identification)

24 BY MR. ROTHSCHILD:

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

Exam./Rothschild - Baksa

- 1 science teachers. Can you tell me who was in
2 attendance at the meeting?
- 3 A. Brian Ream, science teacher; Shane Miller,
4 assistant principal at the high school;
5 Mark Lentz, science teacher; Rob Eshbach,
6 science teacher; and Bert Spahr, science
7 teacher.
- 8 Q. Was anybody else in attendance, for example,
9 school board members?
- 10 A. No.
- 11 Q. So this was just you and the science teachers
12 that are listed here?
- 13 A. Yes.
- 14 MR. ROTHSCHILD: I'd like to now mark as
15 Baksa 3 004024.
16 (Baksa Deposition Exhibit #3 marked for
17 identification)
- 18 BY MR. ROTHSCHILD:
- 19 Q. You described this as a copy of the biology
20 curriculum page that addresses evolution,
21 correct?
- 22 A. Yes.
- 23 Q. There are handwritten notes on the document.
24 Whose notes are those?
- 25 A. Those are mine.

Exam./Rothschild - Baksa

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

Exam./Rothschild - Baksa

- 1 Baksa 3?
- 2 A. When I first looked at this and now looking at
3 it, I do not remember this or creating this.
4 But for this to be -- to exist, I would be the
5 only one that would produce something like this.
- 6 Q. And when you say you were the only person who
7 would create something like that, may I take
8 that to understand that you are the only person
9 who prepares these documents of curriculum
10 guides for the school?
- 11 A. Correct.
- 12 Q. Or for the school district?
- 13 A. Right.
- 14 Q. And my understanding, other than where you found
15 this within your other documents, you don't have
16 any recollection of what date it was created on?
- 17 A. That's correct.
- 18 Q. Do you know why this document was created?
- 19 A. No.
- 20 Q. Did you ever initiate an effort in Dover Area
21 School District to have-- Let me withdraw that
22 for a moment. This is a curriculum page that
23 relates to the teaching of evolution, correct?
- 24 A. Yes.
- 25 Q. And at the bottom of the page it has a unit

Exam./Rothschild - Baksa

- 1 content that says students will be able to
2 demonstrate awareness of other theories of the
3 origin of life including but not limited to
4 creationism.
- 5 A. Correct.
- 6 Q. Did you ever initiate on your own in an effort
7 to change the curriculum to include making
8 students aware of other theories including
9 creationism?
- 10 A. No.
- 11 Q. Based on your experience in preparing these
12 curriculum guides and knowing how you would have
13 acted in this process, can you reach any
14 conclusions of why you would have prepared a
15 curriculum guide which did include the teaching
16 of creationism?
- 17 A. Well, I don't-- I don't remember creating the
18 document. But seeing the document here, when I
19 found the document, there was a note on from my
20 secretary to copy this for a meeting with the
21 high school teachers. And there were also
22 attached to this document 10 copies. So that
23 leads me to believe that-- I don't remember
24 ever showing this document to anyone or
25 discussing it with anyone. And seeing that the

Exam./Rothschild - Baksa

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

5 Q. But they were obviously created.

6 A. Yes.

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

10 A. I don't know that.

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

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

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

Exam./Rothschild - Baksa

- 1 statement having creationism in it.
- 2 Q. Do you still have that document with the
3 handwriting?
- 4 A. No. That would have been discarded by my
5 secretary after she would have typed it.
- 6 Q. Did Mr. -- Dr. Nilsen tell you who gave him that
7 document?
- 8 A. No.
- 9 Q. Did you ask?
- 10 A. No.
- 11 Q. Did you recognize the handwriting on the
12 document?
- 13 A. Well, Dr. Nilsen gave me a curriculum page
14 document with his handwriting on.
- 15 Q. Did he say who had provided the content that he
16 had put down in handwriting?
- 17 A. No.
- 18 Q. Was it your understanding that he was asking you
19 to incorporate his handwritten comments into a
20 curriculum page of this sort we're looking at
21 here?
- 22 A. Yes.
- 23 Q. And the handwriting was on the very subject we
24 have here, origins of life?
- 25 A. Yes.

Exam./Rothschild - Baksa

- 1 Q. And did he tell you what he wanted you to do
2 with the curriculum guide when he -- once it was
3 created?
- 4 A. I don't remember Dr. Nilsen giving me specific
5 instructions what to do with the new language.
6 The normal course would be that I would draft
7 language and then sit down with the teachers to
8 present that for their review.
- 9 Q. Let's go back to Baksa 1. Mr. Baksa at 4014
10 begins this article from the magazine called
11 Cresset, C-r-e-s-s-e-t.
- 12 A. Yes.
- 13 Q. Do you remember how that came into your
14 possession?
- 15 A. I think Mr. Bonsell gave me the article.
- 16 Q. When did he give it to you?
- 17 A. That I don't know.
- 18 Q. Did he say anything when he gave it to you?
- 19 A. I don't-- I don't remember.
- 20 Q. Did you ever discuss the article with him?
- 21 A. That I don't remember either.
- 22 Q. Did you discuss it with anybody else?
- 23 A. I don't think so.
- 24 Q. Did you have an understanding of why he was
25 giving you this article?

Exam./Rothschild - Baksa

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

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

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

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

20 Q. And did you understand what his concerns were?

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

25 Q. And you used the word earlier personal beliefs.

Exam./Rothschild - Baksa

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

3 A. I used personal beliefs?

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

6 A. I don't remember that.

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

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

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

Exam./Rothschild - Baksa

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

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

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

15 MR. ROTHSCHILD: Thank you.

16 BY MR. ROTHSCHILD:

17 Q. You may answer.

18 A. Can you repeat that question.

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

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

23 BY MR. ROTHSCHILD:

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

Exam./Rothschild - Baksa

- 1 question which is, was part -- was it your
2 understanding that part of Mr. Bonsell's concern
3 was that evolution conflicted with some
4 students' personal beliefs?
- 5 A. From my conversations with Mr. Bonsell, he
6 expressed his concerns to me that the
7 presentation of Darwin in the textbook would
8 leave students to a certain understanding of
9 evolution which may differ from ones that they
10 or their families may hold. And he was
11 concerned about that.
- 12 Q. And when you're talking about ones that their
13 families held, were those personal religious
14 beliefs?
- 15 A. That I wouldn't know.
- 16 Q. You had no understanding about that?
- 17 A. Right.
- 18 Q. But you did understand that he was worried that
19 the teaching of evolution would conflict with
20 beliefs that students and their families held?
- 21 A. Yes.
- 22 Q. If you could turn to Page 4007. This is the
23 document indicating that you ordered a book
24 called Evolution's Workshop: God and Science in
25 the Galapagos Islands?

Exam./Rothschild - Baksa

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

Exam./Rothschild - Baksa

- 1 A. Yes.
- 2 Q. Did you read the book?
- 3 A. Parts of it, not all of it.
- 4 Q. Let's turn to Page 4012. These are your notes
5 from the Messiah College conference that you
6 attended on March 26th?
- 7 A. Correct.
- 8 Q. And up at the top it looks like there's the name
9 Ted Davis. Is that correct?
- 10 A. Yes.
- 11 Q. And who is he?
- 12 A. I believe Ted Davis is affiliated with Messiah.
- 13 Q. Then am I correct in understanding from your
14 notes that most of the conference was a lecture
15 from Edward Larson?
- 16 A. Yes.
- 17 Q. And in it he discussed the history of the
18 teaching -- the history of the issue of
19 creationism?
- 20 A. Evolution.
- 21 Q. And also creationism?
- 22 A. I don't remember that. I'm looking at my notes
23 to see if-- He mentioned creationism here, but
24 I don't remember him speaking-- From what I
25 remember of the conference, he spent a great

Exam./Rothschild - Baksa

- 1 deal of it simply giving the historical history
2 of evolution and the debates that arose and some
3 of the opinions and some of the major works that
4 addressed those opinions during different
5 periods of history. It was more that than it
6 was speaking directly about creationism.
- 7 Q. Summarizing your notes here, it looks like there
8 was some discussion about Darwin, Darwin's
9 theory?
- 10 A. Yes.
- 11 Q. And then there was also discussion about what's
12 commonly referred to as the Scopes monkey trial?
- 13 A. Yes.
- 14 Q. Then it looks like pretty far down the page you
15 have the word second phase?
- 16 A. Yes.
- 17 Q. And has the date 1961 and lists the Genesis
18 flood and explanation of six day creation or
19 within last 10,000 years. Sitting here today,
20 do you remember this being part of the
21 discussion?
- 22 A. Yes.
- 23 Q. And then it looks like below that it says,
24 today?
- 25 A. Yes.

Exam./Rothschild - Baksa

- 1 Q. And then it says-- Why don't you tell me what's
2 written next to 10 years -- next to today,
3 excuse me.
- 4 A. Next to today is heading Term and under it Young
5 Earth Creationists and then another heading Term
6 and Common Ancestry and then Intelligent Design.
7 All three of those are underlined.
- 8 Q. And can you tell me what's in that paragraph
9 below the words Young Earth Creationists?
- 10 A. In parentheses?
- 11 Q. Yes.
- 12 A. Dinosaurs were on Noah's ark.
- 13 Q. Am I correct that he's associating that with the
14 young earth creationism?
- 15 A. I believe so.
- 16 Q. Just to be clear, we have-- It says, second
17 phase. Second phase of what?
- 18 A. Of the controversy of evolution, I believe.
- 19 Q. When you say the controversy of evolution, what
20 controversy?
- 21 A. That challenges that there may be other theories
22 other than Darwin's.
- 23 Q. So second phase includes the Genesis flood,
24 right?
- 25 A. That's what it looks like from my notes.

Exam./Rothschild - Baksa

- 1 Q. And then for today there's actually -- looks
2 like there's words above the terms you just read
3 that look to me like they should be associated
4 with today as opposed to second phase. Could
5 you read those words and tell me where you think
6 they fit in your notes?
- 7 A. It says, 10 years later balanced education
8 struck down, Philip Johnson.
- 9 Q. And looking at those words today, what do you
10 believe you were trying to record?
- 11 A. I could only-- I could only guess from my
12 notes, but I would think what that means is that
13 anything being presented other than Darwin's
14 theory of evolution wouldn't hold.
- 15 Q. And when you looked at -- you have the word
16 second phase and today, did you understand that
17 to be sort of the second phase of creationism?
- 18 A. No, the second phase of other theories other
19 than Darwin's gaining interest.
- 20 Q. Where you have today Young Earth Creationists
21 was one of the challenges?
- 22 A. Well, I thought these-- I think these
23 represented as three prominent schools of
24 thought today besides Darwin's.
- 25 Q. And if we could turn over to the next page. The

Exam./Rothschild - Baksa

- 1 page we were just reviewing was 004012. Now
2 turning to 004013, the second page of the notes,
3 can you tell me what's written at the very top
4 of the document?
- 5 A. Creationism and the law.
- 6 Q. Was there a particular person who discussed
7 creationism and the law or that's the whole
8 seminar?
- 9 A. That's the whole seminar.
- 10 Q. And then it looks like there's notes that say
11 from Ted Davis. Is this recording things that
12 were said by Ted Davis at Messiah College?
- 13 A. I don't believe so. Ted Davis was affiliated.
14 And at the end of the presentation by Larson he
15 spoke a little bit in general and then opened it
16 up for questions. So underneath Ted Davis I
17 remember that coming from a teacher that was
18 kind of in the back of the room. And that was
19 their comment to the group there, the audience.
- 20 Q. Can you just read what was said that you have
21 recorded here?
- 22 A. At the school level we do not teach theories and
23 all opposing arguments for any area like
24 gravity, germ theory, et cetera. We are not
25 prepared to do that and would be confusing to

Exam./Rothschild - Baksa

- 1 students. We teach prevailing theories that to
2 date work best for scientists to explain things.
- 3 Q. And after that?
- 4 A. Phil Johnson - attack on evolution - common
5 descent. To National Science Teachers
6 Association - position on evolution.
- 7 Q. This conference took place on March 26, correct?
- 8 A. Yes.
- 9 Q. And I think you actually observed in one of your
10 earlier answers that that happened to be the
11 same day as a board retreat?
- 12 A. Yes.
- 13 Q. Did you find this session at Messiah College
14 pretty informative?
- 15 A. Yes.
- 16 Q. It taught you information about the evolution
17 controversy and issues like creationism that
18 maybe you were less aware of before then?
- 19 A. Yeah. I wasn't aware of the history of it.
- 20 Q. And then you attended the March 26, 2003 board
21 retreat in the evening, correct?
- 22 A. Correct.
- 23 Q. And that's your first -- the first board retreat
24 you had attended as an assistant superintendent
25 in Dover?

Exam./Rothschild - Baksa

1 A. Yes.

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

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

8 (Baksa Deposition Exhibit #4 marked for
9 identification)

10 BY MR. ROTHSCHILD:

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

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

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

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

25 Q. In the deposition process?

Exam./Rothschild - Baksa

1 A. Yes.

2 Q. So you don't know that they were handed out at
3 the Messiah College event?

4 A. Right.

5 Q. Is it possible they were?

6 A. I don't remember there being any handouts
7 whatsoever there. There wasn't even an agenda.

8 Q. Mr. Baksa, I'm going to show you a document that
9 was produced very recently by the district.

10 MR. ROTHSCHILD: We'll mark that as
11 Baksa 5. It's Bates stamped 3969, and I believe
12 Plaintiff's Trial Exhibit 24.

13 (Baksa Deposition Exhibit #5 marked for
14 identification)

15 BY MR. ROTHSCHILD:

16 Q. Do you recognize Baksa 5?

17 A. Yes.

18 Q. That's an agenda for the board retreat on
19 March 26th?

20 A. Yes.

21 Q. Was this something you remember receiving at the
22 board retreat?

23 A. Yes.

24 MR. ROTHSCHILD: I'm going to mark as
25 Baksa 6 a document Bates stamped P01665 through

Exam./Rothschild - Baksa

1 1666.

2 (Baksa Deposition Exhibit #6 marked for
3 identification)

4 BY MR. ROTHSCHILD:

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

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

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

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

23 A. Yes.

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

Exam./Rothschild - Baksa

1 indicates the subject of board issues?

2 A. Yes.

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

6 A. Yes.

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

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

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

16 A. I usually did.

17 Q. Would you preserve those notes?

18 A. No.

19 MR. ROTHSCHILD: I'm going to mark as
20 Baksa 7 a document Bates stamped 003970 through
21 71 which will be trial Exhibit P-25 also
22 recently produced by defendants.

23 (Baksa Deposition Exhibit #7 marked for
24 identification)

25 BY MR. ROTHSCHILD:

Exam./Rothschild - Baksa

- 1 Q. Do you recognize this document, Mr. Baksa?
- 2 A. Both pages?
- 3 Q. Yes.
- 4 A. Yes.
- 5 Q. Where have you seen this before?
- 6 A. Dr. Nilsen after the retreat, we hold
- 7 administrative meetings, meetings with all the
- 8 supervisors and administrators in the district.
- 9 Then I don't know for sure, but typically that
- 10 would be a setting in which he would distribute
- 11 information like this as a summary of the
- 12 retreat.
- 13 Q. And so this is something he distributed to you?
- 14 A. I would guess so.
- 15 Q. And do you understand these to reflect
- 16 Dr. Nilsen's notes about what the board issues
- 17 were?
- 18 A. Yes.
- 19 Q. And, for example, for Mr. Wenrich, one of his
- 20 issues was K through 12 discipline consistency?
- 21 A. Yes.
- 22 Q. Mr. Brown wanted to emphasize communication?
- 23 A. Yes.
- 24 Q. And Mr. Bonsell listed creationism as one of his
- 25 issues, correct?

Exam./Rothschild - Baksa

- 1 A. Yes.
- 2 Q. And that's what he said, didn't he?
- 3 A. I don't remember Mr. Bonsell talking about
4 creationism at this meeting.
- 5 Q. When you received this from Dr. Nilsen, did you
6 tell him he needed to correct anything on this
7 document?
- 8 A. No.
- 9 Q. So let me just summarize here. You on
10 March 26th had attended a conference in which
11 the issue of creationism was discussed, correct?
- 12 A. Yes.
- 13 Q. You went to this meeting I assume with
14 creationism on your brain, correct? You went to
15 the retreat with creationism on your brain?
- 16 A. I went to the retreat after the conference.
- 17 Q. Surely the issue of evolution and creation was
18 prominent in your mind having just spent several
19 hours hearing about it?
- 20 A. Yes.
- 21 Q. And Dr. Nilsen-- The board articulated their
22 issues, correct?
- 23 A. Yes.
- 24 Q. And following the retreat, Dr. Nilsen circulated
25 this document which describes the issues that

Exam./Rothschild - Baksa

- 1 the board had identified, correct?
- 2 A. Yes.
- 3 Q. And under Mr. Bonsell's list was creationism,
- 4 correct?
- 5 A. Yes.
- 6 Q. An issue you had just been recently sensitized
- 7 to, correct?
- 8 A. Yes.
- 9 Q. And you did not tell Dr. Nilsen, you need to
- 10 correct this, this isn't what Mr. Bonsell said?
- 11 A. No. These are his notes.
- 12 Q. And you didn't say, you know, Dr. Nilsen, this
- 13 isn't my recollection?
- 14 A. No.
- 15 Q. And shortly after the retreat, you went and
- 16 talked to Mrs. Spahr, didn't you?
- 17 A. Yes.
- 18 Q. And one of the things you did was give her a
- 19 heads up as the head of the science department
- 20 about the kind of issues the board was
- 21 discussing relating to science curriculum,
- 22 correct?
- 23 A. Mr. Bonsell -- Mr. Bonsell's concerns.
- 24 Q. You went directly to Mrs. Spahr and said
- 25 Mr. Bonsell has got some concerns, let me tell

Exam./Rothschild - Baksa

1 you about them?

2 A. Yes.

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

6 A. Yes.

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

9 A. Yes.

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

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

16 (Baksa Deposition Exhibit #8 marked for
17 identification)

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

Exam./Rothschild - Baksa

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

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

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

15 BY MR. ROTHSCHILD:

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

21 A. Yes.

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

23 A. Yes.

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

Exam./Rothschild - Baksa

- 1 Curriculum, correct?
- 2 A. Yes.
- 3 Q. In that document Ms. Peterman reports that
- 4 Mrs. Spahr said that you told her that there is
- 5 a board member who wants to teach 50 percent
- 6 creationism, correct? That's what it says?
- 7 A. It says that a board member wanted creationism
- 8 taught in biology classes.
- 9 Q. And this--
- 10 A. And then lower it says that this board member
- 11 wanted 50 percent of the topic of evolution to
- 12 involve the teaching of creationism.
- 13 Q. And when you received this document, you never
- 14 went to Mrs. Spahr and said, wait a minute,
- 15 Bertha, you got this wrong, that's not what I
- 16 told you?
- 17 A. It's not Mrs. Spahr saying-- I understood this
- 18 document to come from Dr. Peterman. I don't
- 19 even know that-- I wasn't thinking of
- 20 Mrs. Spahr.
- 21 Q. Well, Mr. Baksa, Ms. Peterman is only reporting
- 22 what Mrs. Spahr told her, right?
- 23 A. Yes.
- 24 Q. So if somebody got the conversation wrong that
- 25 you had, it was Mrs. Spahr, correct?

Exam./Rothschild - Baksa

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

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

15 So when I received this memo that talks
16 about the teaching of creationism, nobody had
17 ever talked to me about teaching creationism. I
18 don't remember saying that to Mrs. Spahr at all,
19 and no board member or other members were at
20 that time pushing for creationism to be taught
21 50-50 side by side in the curriculum.

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

Exam./Rothschild - Baksa

- 1 it was a heads up. It was very low key. I
2 think this memo paints a situation that just
3 didn't exist as far as the urgency of any board
4 members wanting creationism taught in the
5 biology curriculum.
- 6 Q. So let me get this right. We get the list of
7 board issues from Dr. Nilsen that lists
8 creationism under Mr. Bonsell's name, and you
9 don't tell Dr. Nilsen he's got to correct that?
- 10 A. I wouldn't tell Dr. Nilsen he has to correct his
11 own notes.
- 12 Q. You didn't even suggest to him that he may have
13 heard that wrong?
- 14 A. No. If somebody is taking notes of a
15 recollection of the -- of what they heard,
16 because I didn't hear it doesn't mean that it
17 didn't happen. So I wouldn't on any of those
18 items say that they didn't say that. Obviously
19 Dr. Nilsen heard that and put it down there.
20 Why would I question that? I wouldn't.
- 21 Q. You knew that the issue of creationism based on
22 having just attended the Messiah College was a
23 pretty important and sensitive issue, didn't
24 you?
- 25 A. Dr. Nilsen asked me to go to the March 26

Exam./Rothschild - Baksa

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

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

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

Exam./Rothschild - Baksa

1 conversation in the classroom.

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

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

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

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

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

Exam./Rothschild - Baksa

- 1 Q. But you agree your notes indicate that?
- 2 A. Yes.
- 3 Q. And for whatever your reasons, you certainly did
4 not say to Dr. Nilsen, creationism? Nobody said
5 that, you didn't say that when you got the list
6 of board issues?
- 7 A. Correct.
- 8 Q. And then you get this memo from Dr. Peterman,
9 and I understand your feelings about
10 Dr. Peterman, but you didn't go to Dr. Peterman
11 or Mrs. Spahr and say, ladies, this is all
12 wrong, that's not what I told Bertha?
- 13 A. Correct.
- 14 Q. Then we get to the fall of 2003, and Mr. Bonsell
15 is still concerned about the teaching of
16 evolution, correct?
- 17 A. I had set up in the fall of 2003 a meeting with
18 the science teachers and Mr. Bonsell so that he
19 could hear firsthand from the science teachers
20 exactly how they are presenting Darwin and the
21 theory of evolution in the classroom.
- 22 Q. Who initiated that meeting?
- 23 A. I did.
- 24 Q. And you did that because you understood that
25 Mr. Bonsell had concerns about the teaching of

Exam./Rothschild - Baksa

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

4 A. Yes.

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

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

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

Exam./Rothschild - Baksa

1 into the curriculum for approval.

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

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

13 A. Yes.

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

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

21 BY MR. ROTHSCHILD:

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

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

Exam./Rothschild - Baksa

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

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

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

7 Q. You have no memory whatsoever?

8 A. I just don't remember doing it.

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

16 MR. THOMPSON: Objection, argumentative.

17 BY MR. ROTHSCHILD:

18 Q. You may answer.

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

Exam./Rothschild - Baksa

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

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

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

16 A. What number is that?

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

21 A. No.

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

25 A. Correct.

Exam./Rothschild - Baksa

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

4 A. Correct.

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

6 A. Correct.

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

10 A. No.

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

17 BY MR. ROTHSCHILD:

18 Q. Same question, voice softer.

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

21 BY MR. ROTHSCHILD:

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

25 A. No.

Exam./Rothschild - Baksa

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

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

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

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

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

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

Exam./Rothschild - Baksa

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

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

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

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

24 MR. ROTHSCHILD: Thank you.

25 (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.

