

IN THE MATTER OF JOHN FRESHWATER

Mount Vernon City School
District Board of Education

Employer,

AND

REFEREE: R. Lee Shepherd

John Freshwater

Teacher.

**JOHN FRESHWATER'S REPLY BRIEF TO THE EMPLOYER'S POST-HEARING
BRIEF**

I. INTRODUCTION

A. Representatives For The Board Of Education (BOE) Have Lost Their Way

The weak gravamen of the allegations against John Freshwater becomes patently obvious when reading the *Post-Hearing Brief for Mount Vernon City School District*. But the blatant disregard for the most basic elements of justice, fairness, the law and ethics, demonstrates representatives for the board of education (BOE) have completely lost their way in the misguided approach to presenting its arguments in the work product submitted on behalf of the employer.

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The writer(s) of the BOE's post-hearing brief shows they are foolhardy, or possess an impression that John Freshwater and the undersigned would not recognize a gross violation of established law regarding ex post facto application of succeeding law, violations of R.C. 3319.16 requiring specification of any violation by the legislative body of the BOE and improper injection of materials into their BOE's post-hearing brief.

In response to the *Post-Hearing Brief for Mount Vernon City School District* proffered by representatives for the BOE, John Freshwater's reply will systematically refute each of the specifications in the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*, showing that testimony and evidence completely disproves each allegation. Representatives for the BOE have failed to demonstrate by clear and convincing evidence or any lesser standard that John Freshwater violated any policy of the BOE. In fact, representatives for the BOE failed to introduce a single BOE Policy for which it is alleged John Freshwater violated. The evidence regarding each specification is demonstrably tilted *in favor* of John Freshwater simply for the fact Teacher Freshwater did not violate any established policy of the BOE.

The correct citation and application of relevant law is only detailed in *John Freshwater's Closing Statement Brief*.

John Freshwater's Reply will respond to the enumeration set forth in the BOE's post-hearing brief. The question remains, how can anybody find that John Freshwater should have his teaching contract terminated, considering representatives for the BOE failed to introduce a single BOE Policy in support of their contention that Teacher Freshwater engaged in any act that was willful and persistently in violation of reasonable regulations, or for other good and just cause based upon the facts?

B. Fallacies Promoted by Representatives of the BOE

The post-hearing brief for the Mount Vernon City School District is seemingly designed to scare this Referee and the BOE members into hasty and irrational action. It is imperative for any reader of the BOE's post-hearing brief to refresh their knowledge of propaganda techniques in order to defend the reader's mind from false persuasion. The writer(s) of the BOE's *Post-*

Hearing Brief for Mount Vernon City School District make prolific use of the following fallacies attempting to swindle an unsuspecting reader:

1. **Fallacy of arbitrary assertion:** When the argument asserts as fact something that has not been definitively proven, the assertion is *arbitrary*. For example, on Page 20 of the BOE's post-hearing brief and following, the assertion that Zach Dennis was actually *burned* is unproven, and therefore an *arbitrary* assertion. In fact, there is an abundance of evidence that casts considerable doubt on the veracity of the claim. If true, the parents could have so easily established a "burn" in December 2007 with a visit to a physician. (See Diagram – "Are these reasonable parents? Are these conscientious Administrators?")
2. **Fallacy of question-begging epithet:** When emotional, inflammatory language is used in lieu of actually proving something, the author is hoping that the reader will respond in a hysterical impulsive manner without actually evaluating the merits. Hysteria peddling, such as is on Page 38 of the BOE's post-hearing brief, where the author tells the reader they should be terrified by the "frightening glimpse" of John Freshwater, does not prove any argument, only the paucity of actual evidence and sound logic. Furthermore, on Page 54, the author shows their arrogance by mocking John Freshwater's teary-eyed explanation of his "inspiration"¹ in failing to grasp how the personal, green Bible was Teacher Freshwater's "workplace Bible"², which is different from his other four (4) Bibles³, and has remained on his desk for twenty-one (21) years solely for his own personal benefit and not for anyone else.⁴
3. **Fallacy of appealing to ignorance:** When the author appeals to what is *unknown* in order to move the reader to uninformed action, the writer is appealing to ignorance. The author does this, for example, on Page 38 of the BOE's post-hearing brief, when the writer combines the *unknown* with a question-begging epithet to scare the reader with "a frightening glimpse into what else John Freshwater *may have* presented to his eighth grade students..." Pursuant to R.C. 3319.16, John Freshwater is required by law to only respond to actual specifications identified in the BOE's *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*.
4. **Genetic fallacy:** When the author asserts information should be regarded in a certain way *solely* because of its source rather than on its own merits, this is a *genetic fallacy*. While a source may cast doubt on the integrity of the content, it does not *prove* it. For example, the discussion regarding the alleged use of materials or videos sourced from "ministries" as described on Pages 28-29 of the BOE's post-hearing brief, does not *prove* anything about *how* (context) or even *if* the materials were used.

¹ Transcript Page 4477 Line 4 – Page 4478, Line 4, and 4475, Line 17

² Transcript Page 4475, Line 17

³ Transcript Page 4435

⁴ Transcript Page 4477-78

**Are these reasonable parents?
Are these conscientious Administrators?**

Tesla Coil Red Flags

**No one talked
directly to child**

**No doctor
saw the arm**

**Parents went
straight to the
superintendent**

**Parents want
to remain
anonymous**

**No medical
history
considered**

**No children's
services called**

**Extraordinary
accusation**

**No Administrator saw
the arm or asked
to see the arm**

**Parents took
photos...
why?**

**No mention of arm
held down until 10
months later**

5. **Fallacy of equivocation:** When the author subtly shifts the meaning of a key term in the midst of the argument, the writer is *equivocating*. Attorney Millstone did this, perhaps unwittingly, in the hearing, when he asked witnesses if John Freshwater marked on students' arms (made a motion with the arc of the Tesla Coil, as though a visible artifact could be seen immediately like from an ink pen), then claimed that John Freshwater marked students' arms (burned and branded). (See also Pages 6 and 26 of the BOE's post-hearing brief for more equivocation of the word, "mark".)
6. **Fallacy of bifurcation:** When the author falsely presents two options as the only possibilities, the writer is committing the fallacy of bifurcation. For example, on Pages 29-30 of the BOE's post-hearing brief, Student Maggie Wayne recalls having seen the "Watchmaker" video, but that Student Wayne had attended FCA only once. The author then *bifurcates* when the writer concludes that Student Wayne *must have seen* the video in science class, ignoring that Student Wayne could have seen it *anywhere*, under *any circumstance* as the video⁵ was freely available on the internet. Disingenuously the writer also ignored the clear and straight-forward testimony of eleven (11) other students, classmates of Zach Dennis, each of whom testified that the "Watchmaker" video was never shown in John Freshwater's science class!⁶ Additionally, former Student Lori Hubbell, also the guardian of Justin Newland, testified Student Justin Newland informed Superintendent Steve Short that Student Newland "had never seen that video before".⁷
7. **Fallacy of irrelevant thesis:** When the author begins to argue a particular thesis, but then "proves" it using a different concept, he is using an irrelevant thesis, or "straw man" argument. For example, on Page 18 of the BOE's post-hearing brief, the author argues that *training* was given to John Freshwater for his role as monitor, facilitator, and supervisor of the FCA. But then the author asserts that testimony of "a handout" was given, and then makes a massive leap that the thesis was therefore proved, when in fact the description cannot be considered training.
8. **Faulty appeal to authority:** When the author argues that a claim must be true simply because an "expert" says so, they are making a faulty appeal to authority. For example, an opinion of Dr. Rissing on the movie *Expelled* is put forth on Page 34. However, Dr. Rissing did not state that he has *seen* the movie, only that he is "familiar" with it, perhaps in the same way that Dr. Princehouse,⁸ Dr. Faber,⁹ Mr. Herlevi,¹⁰ and Mrs. Schutte¹¹ are familiar with it, but have not seen the movie, either. Similar utterances of these experts

⁵ Transcript Page 3731, Line 4

⁶ See Employee Exhibits of affidavits made by Students Miranda Baer (Ex. 184/Tr.5072), Kayla Wells (Ex. 186/Tr. 5098), Tokayla Redman (Ex. 189Tr. 5119-5120), Joshua Grubaugh (Ex. 199/Tr. 5285), Aaron Morris (Ex. 204/Tr. 5323), Jake Stotts, (Ex. 207/Tr. 5343), Allison Ruhl (Ex. 194/Tr. 5241), Cody Smith (Ex. 204/Tr. 5303), Angelita Conkel (Ex. 193/Tr. 5216), Corbin Heck (Ex. 23), Taylor Strack (Ex. 101/Tr. 3848)

⁷ Employee Exhibit 181 and Transcript Page 5029-5031

⁸ Transcript Page 1626

⁹ Transcript Page 1379

¹⁰ Transcript Page 1187

¹¹ Transcript Page 805

on a number of subjects are also outside their field of expertise, and attempts to use the opinions of these witnesses in such circumstances is a *faulty appeal to authority*.

Representatives for the BOE employ fact distracting techniques, so let the reader of the BOE's post-hearing brief be on guard to avoid being swindled. Examination of the facts is paramount as an ancient Proverb warns, "he that trusteth in his own heart is a fool".

C. **John Freshwater Still Prevails**

In order to prevail, the BOE's representative must *prove* the assertions with a clear a convincing manner. The rudiments of justice demand corroborated witnesses, authoritative documents, and facts. Legally and contractually, the burden of proof lies squarely upon the BOE's representative, but the writer has abandoned these rudiments in their attempt to make a case. These charges against John Freshwater are unsubstantiated.

John Freshwater prevails in this matter notwithstanding the BOE's post-hearing brief and the sum of the decision calculus remains the same. John Freshwater prevails in this matter because:

1. Any and all matters related to John Freshwater's use of a Tesla Coil were adjudicated by Principal William White's letter to John Freshwater dated January 22, 2008.¹²
2. The Academic Content Standards were not applicable in the Mount Vernon City School District until the beginning of the 2004-2005 school year.¹³
 - A. John Freshwater taught his 8th grade students exactly as he was required as evidenced by the only known assessment tool authorized in the State of Ohio; the Ohio Achievement Tests. John Freshwater's students received proper instruction resulting in him being the only 8th grade teacher whose students achieved a proficient rating of seventy-seven (77%) percent on the Ohio Achievement Tests¹⁴ despite his classes containing the same number or more special education students.¹⁵
 - B. Ten (10) eyewitness students¹⁶, two (2) teachers¹⁷ and one (1) principal¹⁸ testified John Freshwater never instructed on the topics of creationism nor intelligent design.

¹²Board Exhibit 6, Attachment 18, Letter Dated January 22, 2008, from Principal William White to John Freshwater.

¹³ Transcript Page 1389, 1390 and see Employee Exhibit 13

¹⁴ Employee Exhibit 57

¹⁵ Employee Exhibit 57

¹⁶ See discussion herein below under subheading "John Freshwater Did NOT Proselytize".

3. John Freshwater complied with all of the known parameters as he facilitated, monitored and supervised the Fellowship of Christian Athletes (FCA).
 - A. Witness testimony from credible sources clearly demonstrates John Freshwater did not conduct nor lead any prayers during FCA meetings.¹⁹
 - B. Witness testimony from credible sources clearly demonstrates John Freshwater never asked non-familial students to lead prayer in FCA meetings.²⁰
 - C. Witness testimony from credible sources clearly demonstrates John Freshwater did not exceed his role as facilitator, monitor and supervisor of the FCA.²¹
4. John Freshwater exercised a constitutional right to have a personal Bible in his classroom on his desk.
 - A. John Freshwater removed all items he was lawfully asked to remove.
 - B. John Freshwater did not receive any instruction from Principal William White or anybody else to remove the patriotic poster, which was distributed through the Mount Vernon Middle School office, depicting former President George Bush and Colin Powell.
 - C. John Freshwater never intended or tried to “make a point”²² by bringing additional “religious articles” into his classroom but rather he was both curious about the differences between his personal, green Bible and that of the school’s library Bible.²³

During the hearing representatives for the BOE completely abandoned the established policies of the BOE. In the *Post-Hearing Brief for Mount Vernon City School District* the BOE makes limited reference to one policy. Five (5) POLICIES of the BOE granted Teacher Freshwater the authority to take action as he did:

1. **2270 - RELIGION IN THE CURRICULUM**
2. **8800 - RELIGIOUS/PATRIOTIC CEREMONIES AND OBSERVANCES**
3. **8800B - RELIGIOUS EXPRESSION IN THE DISTRICT**
4. **2240 - CONTROVERSIAL ISSUES**
5. **3218 - ACADEMIC FREEDOM OF TEACHERS**

¹⁷ Teacher Andrew Thompson testified he had at least six hundred ninety-six (696) classroom interactions with John Freshwater. Teacher Karrie Mahan testified she has worked with John Freshwater since 1997 and never heard John Freshwater use the words, “intelligent design” or “I.D.” Transcript Page 3743.

¹⁸ Principal Tim Keib testified he never heard John Freshwater teach creationism during his approximate one hundred (100) classroom visits to Teacher Freshwater’s classroom. Transcript Page 3626, 3631 and 3649

¹⁹ See discussion in *John Freshwater’s Closing Statement Brief*, Page 134-150, and Diagram titled, “Middle School FCA Speakers Survey” between pages 144-145, and Transcript Page 5305, 5629, 5131, 2187, 2220, 3600.

²⁰ See discussion in *John Freshwater’s Closing Statement Brief*, Page 134-150 and Employee Exhibit 192.

²¹ See discussion in *John Freshwater’s Closing Statement Brief*, Page 145-150.

²² Employee Exhibit 148, pgs. 45-46, the words “make a point” were never used by John Freshwater nor the inquisitors from HR on Call, Inc.

²³ Employee Exhibit 148, Page 45

II. Response to BOE's Unethical Preamble and Evidence of the "Squire Style"

A. Improper Introduction of Information in Preamble

In *John Freshwater's Closing Statement Brief* it was predicted representatives for the (BOE) would attack his testimony by deeming Teacher Freshwater to be lacking credibility.²⁴ On the thirty-eighth (38th) and last day of the hearing on June 22, 2010, this Referee stated the concluding remark,

*"As far as the evidence is concerned and today's hearing, we will close".*²⁵

To make clear from the stated language of this Referee uttered on June 22, 2010, the presentation of evidence closed at 3:22PM, on June 22, 2010, (John Freshwater's birthday²⁶). Representatives for the (BOE) have improperly engaged in "bootstrapping" evidence not previously introduced during the sworn testimony but yet injected for purposes herein in an attempt to discredit John Freshwater. The BOE's post-hearing brief begins with a statement that John Freshwater is not credible because another forum, in a limited matter, subject to only the narrowest presentation of evidence permissible, made a finding disputing John Freshwater's assertion regarding evidence not in his possession. Inclusion of this information in the *Post-Hearing Brief for Mount Vernon City School District* from the limited, restricted inquiry by another forum is absolutely impermissible evidentiary conduct, which is hereby objected to, and should be immediately stricken without further consideration. The mere presence of the material creates an appealable issue as it was not properly introduced nor was John Freshwater given an opportunity to comment upon evidence intended to be used against him.

²⁴ *John Freshwater's Closing Statement Brief*, Page 55

²⁵ Transcript Page 6343, Line 19-20

²⁶ Transcript Page 6266

Context is once again imperative. To be sure, the forum from which the improperly introduced information is derived is categorically different from the statutory hearing conducted pursuant to R.C. 3319.16, just as the issues to be decided are categorically different. Just as the Order from another tribunal regarding student confidentiality did not apply in this matter, nor does any assessment made by that tribunal apply as the assessment is not binding in this matter and was done for a categorically different purpose. It is important to point out that the other tribunal did not have before it all of the overwhelming, corroborating evidence presented on behalf of John Freshwater, that this Referee has been presented, the sum of which proves John Freshwater's innocence. The other tribunal made a decision based upon a minute fraction of very limited material from which the balance was skewed as a result of previous appointed insurance counsel's gaffe. It is important to note that the information improperly presented at the beginning of the BOE's post-hearing brief was without the benefit of student testimony which was heard in this matter, as previous insurance-appointed counsel for John Freshwater failed to include on the witness list, the student witnesses heard in this forum to be heard in that forum. Further, the issue in that tribunal is still subject to appeal.

Improper introduction of the information as done by the BOE's legal counsel is not a mistake of the mind but rather evidence of a calculated maligned process that has been attempted in other R.C. 3319 hearings.²⁷ The Mount Vernon City School District receives legal counsel from Attorney David Millstone who is employed with a law firm titled, Squire, Sanders and Dempsey (hereinafter, "Squire"). The Cleveland office of the Squire law firm, from which Attorney Millstone derives, was chastised by Ohio's 11th District Court of Appeals in a reported

²⁷ *James v. Trumbull County Board of Education*, 105 Ohio App3d 392 (Ohio App3d 11 Dist. 1995)

public judicial opinion for this very same type of improper evidentiary bootstrapping. In *James v. Trumbull County Board of Education*, 105 Ohio App3d 392 (Ohio App 11 Dist. 1995), the “Squire Style” of improperly attempting to inject evidentiary considerations was recognized and rejected by the appellate court when it stated,

“Finally, appellant’s attempt to supplement the record with materials not before the trial court will not be condoned. *Appellant argues, for the first time on appeal, that appellee violated federal and state law, professional norms and BOE Policy. Appellant’s attempt to bolster its initial position by bootstrapping additional reasons for the discharge, after the fact, is disingenuous. Although a matter of public record, similarly appellant’s actions in attaching to its submission a copy of a related trial court opinion, which was not before either the referee, the board, or the trial court to augment its position, likewise lacks credence and adherence to fundamental concepts of appellate practice. (emphasis added)* *Notwithstanding this approach, appellant failed to present any evidence that appellee violated any state or federal law. Both the referee and the trial court concluded that appellee had not failed to follow appellant’s policies or state or federal regulations”.*

As noted in *John Freshwater’s Closing Statement Brief*, Pages 22-24, the teacher who was the recipient of the “Squire Style” in the *James v. Trumbull County Board of Education* case overcame the improper introduction of information and prevailed. In this matter, the *James* case stands for multiple mandates:

1. Determining a teacher’s *intent* in proceedings pursuant to R.C. 3319.16 has been important since 1995 especially when the teacher engages in a controversial modality.²⁸
2. The referee found Teacher James’ actions may not have been favored in the teaching community, and may not have followed practices and procedures advocated by others in the teaching profession. But because there was not a singular, proven or accepted “standard of practice” in the field, Teacher James “did not intentionally or maliciously try to harm any student she taught”. *Id.*

²⁸ *James v. Trumbull County Board of Education*, 105 Ohio App3d 392 (Ohio App11 Dist. 1995)

3. The referee and Court found Teacher James' admitted use of aversives (the controversial techniques) did not provide a sufficient basis upon which to discharge her for "other good and just cause." Id.
4. In Teacher James' case, the referee was persuaded to find for the teacher because the BOE failed to produce any written policy allegedly violated by Teacher James or cite a job description deficiency. Similarly, in John Freshwater's situation the BOE's presentation of evidence did not include a single exhibit or reference to any written policy of the Mount Vernon City School District. (emphasis added)
5. Witnesses for the BOE avoided reference to the established BOE policies as to do so would demonstrate their incompetence about the policies coupled with the fact the BOE policies actually exonerate John Freshwater. John Freshwater made reference to seven (7) BOE policies and multiple Ohio Revised Code provisions, specifically, R.C. 3313.601,²⁹ that exonerates him. The BOE's counsel did not even ask any clarifying questions related to the BOE's policies introduced in John Freshwater's defense.
6. Exoneration for Teacher James resulted from the failure of the BOE to establish any intentional disregard for the safety or well-being of her students. Id. The Court and referee deemed that Teacher James may not have always used the best judgment but held where teachers work without clear guidelines in an educational area that is evolving and subject to differences of opinion, both statutory and case law require school boards to inform teachers of their expectations before terminating them. Id. (emphasis added)
7. Teacher James' actions were not of the fabric which would constitute "a fairly serious matter" sufficient to prove a discharge under the statute. Id.
8. "Other good and just cause" must be related to some action taken by the teacher with an apparent "intent" by the teacher for the action to result in a prohibited outcome.
9. The "Squire Style" of failing to reference actual BOE policies in the presentation of evidence during its case in chief against a teacher results in a fatal flaw to the evidence against a teacher.
10. The "Squire Style" of improperly injecting even public records after the close of evidence will not be tolerated and is evidence only of negligent case presentation or bad advocacy but not evidence a teacher was in error.

John Freshwater objects to the inclusion of information referenced to support matters in this R.C. 3319.16 hearing but for which Teacher Freshwater was not permitted to testify about and the information should be stricken from the *Post-Hearing Brief for Mount Vernon City School District*.

²⁹ Employee Exhibit 80

B. This Matter Is Not About John Freshwater's Credibility

In the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* there is absolutely no specification charging Teacher Freshwater with an act of dishonesty or any issue of credibility. The specifications contained in the amended resolution are matters regarding policies of the BOE and issues of past practices adopted by the BOE.

Interestingly, Superintendent Steve Short stated on Day 2 of this hearing that he believed John Freshwater's character was to tell the truth,

*"I believe if John Freshwater told that person something, I believe John Freshwater's character that he would tell the truth and that that's what it would be".*³⁰

Do not overlook the now self-serving motive by representatives for the BOE in their challenge to John Freshwater's credibility. The only reason representatives for the BOE - namely Superintendent Steve Short - want to make issue with John Freshwater's credibility is due to the failure by Superintendent Short to ensure compliance with Article 402 of the collective bargaining agreement regarding a teacher's right to provide a comprehensive written statement. If John Freshwater's valid, comprehensive written statements can be set aside, they believe, representatives for the BOE can attempt to recover from the overwhelming evidence created by their failure to ensure compliance with Article 402³¹.

C. Set Aside Any Testimony Offered By John Freshwater And Teacher Freshwater Still Prevails

³⁰ Transcript Page 323

³¹ Employee Exhibit 10, Page 17

Representatives for the BOE cannot prevail upon the facts contained in the record and maybe that is the reason they attempt now, through its brief, as the leading paragraph, to inject materials into the record by bootstrapping extraneous information for which John Freshwater never had a chance to respond during the hearing. Instead of a systematic review of properly introduced evidence, the “Squire Style” undertakes a win at any cost approach which includes disregard for known rules of advocacy. If intentional distortion of facts are the manner and measure required to prevail in this matter, John Freshwater will surely suffer as such actions are not within his character and he would not authorize others to undertake such tactics on his behalf.

Momentarily set aside John Freshwater’s testimony about any topic in this case, and the relevant testimony and exhibits *still* demonstrate that the BOE cannot prove any of the identified specifications as required and limited by R.C. 3319.16, balanced by the clear and convincing standard or any other. Each of the twenty (20) witnesses presented by representatives for the BOE during its case-in-chief are easily challenged and checkmated by the straight-forward, incisively relevant testimony presented by the sixty-six (66) witnesses called by John Freshwater. If John Freshwater’s testimony is momentarily set aside, it is only fair and just to set aside the impeached testimony of Zach Dennis (see *John Freshwater’s Closing Statement Brief* Page 30-32, 102, for full analysis of false statements made by Zach Dennis) and that of other testimony that is suspect. By setting aside any claimed suspect testimony one can focus upon the depth of undisputed credible testimony and determine the facts surrounding the allegations and more importantly, make a determination that the Policies of the BOE permitted John Freshwater to take action.

III. **INApplicable Law**

A. **Ex Post Facto Application of Law Is Plain and Obvious Error**

On June 20, 2008, the BOE passed an errant resolution regarding John Freshwater's employment contract that had to be corrected by an amended resolution on July 7, 2008. The law applicable to the July 7, 2008, *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*, is based upon the requirement of R.C. 3319.16, as that Ohio Revised Code Section existed on July 7, 2008. The Ohio legislature amended R.C. 3319.16 effective on October 16, 2009. The October 16, 2009 amendment to R.C. 3319.16 removed some of the reasons previously existing as a basis for terminating a teacher's contract. Removed from R.C. 3319.16 as a basis for contract termination were the reasons of gross inefficiency or immorality and, willful and persistent violations of reasonable regulations of the board of education. After the October 16, 2009, amendment to R.C. 3319.16, the sole remaining basis for terminating a public school teacher's contract was for good and just cause.

Representatives for the BOE argue for *ex post facto* application of the October 16, 2009, amendment to R.C. 3319.16. The Ohio legislature did not provide authorization for retroactive application of the law to John Freshwater's matter. *Ex post facto* application of law is a repugnant notion in The United States of America with a longstanding abhorrence well situated in this country's history. President Thomas Jefferson commented about *ex post facto* application of law,

*"The sentiment that ex post facto laws are against natural right is so strong in the United States, that few, if any, of the State constitutions have failed to proscribe them. The federal constitution indeed interdicts them in criminal cases only; but they are equally unjust in civil as in criminal cases ..., "*³²

³² Thomas Jefferson to Isaac McPherson, August 13, 1813.

It is a plain and obvious error for the “Squire Style” to assert *ex post facto* application of R.C. 3319.16. The correct application of law is as thoroughly described in *John Freshwater’s Closing Statement Brief*, Pages 6-26.

John Freshwater objects to the ex post facto application of law as proposed by representatives for the BOE.

B. Representatives for the BOE Unlawfully Attempt to Expand Specifications of Amended Resolution

1. Response to Allegation John Freshwater “Initiated” FCA Activities

In the *Post-Hearing Brief for Mount Vernon City School District*, representatives for the BOE impermissibly enlarge and expand the stated specifications detailed in the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*. R.C. 3319.16 makes clear that a teacher so charged pursuant to the statute must receive notice through the resolution the details of the specifications. On Pages 41-43 of the *Post-Hearing Brief for Mount Vernon City School District* there is unlawfully stated a new specification, which is outside and beyond the amended resolution that for the first time charges John Freshwater “initiated” activities within the FCA. Absolutely nowhere does the amended resolution specify such an allegation.

The amended resolution is silent about any “initiated” activities, better yet devoid of any reference to “initiated” activities. John Freshwater is not required to respond to, and objects to, this untenable “Squire Styled” bootstrapping of allegations as the BOE did not include such a specification in the amended resolution. John Freshwater is only required to respond to the three (3) stated specifications of part (3) of the amended resolution which states,

- (a) John Freshwater conducted and led prayer in FCA meetings;

- (b) John Freshwater asked students to lead prayer in FCA meetings; and
- (c) John Freshwater frequently went beyond his role as monitor and contacted guest speakers for FCA events or recommended speakers to students;

In *John Freshwater's Closing Statement Brief*³³ Teacher Freshwater thoroughly and persuasively responded to the allegations that he conducted or led prayer, asked students to lead prayer or frequently went beyond his role as monitor and contacted guest speakers.

Representatives for the BOE failed to present any evidence during the thirty-eight (38) days of hearing or argue in the *Post-Hearing Brief for Mount Vernon City School District* that John Freshwater recommended any speakers to students. Accordingly, John Freshwater objects to the post facto enlargement of the specifications and Teacher Freshwater need not have responded with any other evidence than his simple answer of "No.," he did not recommend any FCA speakers to students.³⁴

2. **Response to Amended Resolution Specifications Not Specifically Defined But Identified As "...including, but not limited to the following examples:"**

As stated and made clear in *John Freshwater's Closing Statement Brief*, the plainly perceivable design of R.C. 3319.16 is that the employing board shall furnish the teacher a written notice signed by its treasurer of its intention to consider the termination of John Freshwater's contract with full specification of the grounds for such consideration.

R.C. 3319.16 requires notice be given to the public school teacher about the charges that the teacher's actions somehow constituted, "...gross inefficiency or immorality;...willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause..." R.C. 3319.16 requires the termination hearing be confined to the grounds given

³³ *John Freshwater's Closing Statement Brief* Page 134-150

³⁴ Transcript Page 4674

for such termination. Because the termination hearing is confined to the grounds contained in the specifications, it was important that the BOE exercise care in the preparation and drafting of the July 7, 2008, specifications. Foreboding the BOE's failure to grasp the depth of their administrators' misunderstanding regarding the importance of Page 216, from the Academic Content Standards requirement that classroom instruction regarding "bias" and the need to explain why it is important to examine data objectively and not let bias affect observations",³⁵ the concept of "notice" has been grossly deficient and mishandled in the amended resolution. The mishandling and deficient notice was immediately apparent by the need for the BOE to correct its representative's act of incompetence by erroneous citation to the "American Content Standards" instead of the correct and appropriate "Academic Content Standards".

John Freshwater was supposed to have to respond only to allegations in the BOE's resolution of July 7, 2008. Attorney Millstone, the BOE's legal counsel, continuously injected material into the record which was unrelated to the allegations in the BOE's July 7, 2008 resolution. The extraneous materials were intended to be inflammatory toward John Freshwater and created a changing nature to the proceedings presumptively aimed to keep John Freshwater guessing about what he might next have to defend. Generally speaking the test of whether the specifications are sufficiently complete appears to be whether or not the teacher is sufficiently apprised of the misconduct of which he is accused to enable him to properly prepare and present his defense. Representatives for the BOE seem to attempt to recover from their laziness of not following R.C. 3319.16's requirement of specificity by using the catch-all phrase, "...including, but not limited to..." which violates the "notice" provision of the statute.

³⁵ Board Exhibit 37

Statutorily, John Freshwater was not required to respond to any extraneous allegations beyond the July 7, 2008, resolution which constitutes the charging document.

IV. Errors in Statement of Facts

The writer of the *Post-Hearing Brief for Mount Vernon City School District* makes a number of errors and misrepresentations, which will be corrected below.

A. Mis-statements of Transcript Citations

Another “Squire Style” misdirection appears in the number of misstated transcript citations used by representatives for the BOE in the *Post-Hearing Brief for Mount Vernon City School District*. John Freshwater and the undersigned recognize and accept an error or mistake in citation to the six thousand three hundred forty-four (6,344) pages may randomly occur. It can even be expected that argument in the *Post-Hearing Brief for Mount Vernon City School District* may contort words used by a witness as recorded in the transcript. However, there are blatant errors and misrepresentations in the citations used by the writer that raise the specter for deceit.

Multiple examples will be presented in the attached exhibit titled, “Exhibit A to John Freshwater’s Reply Brief To The Employer’s Post-Hearing Brief, Misstatements of Transcript Citations in the Post-Hearing Brief for Mount Vernon City School District.” Save for space and efficiency, one example of misrepresentation occurred on Page 6 of the *Post-Hearing Brief for Mount Vernon City School District* which cites “T. 3866” purporting language stated John Freshwater "held students' arm ", whereas the transcript actually records, "set their arms down ". The writer’s misrepresentation is critical as the writer distorts testimony to fit their argument but the language does not support the argument asserted.

Another example occurs on Page 4 of the *Post-Hearing Brief for Mount Vernon City School District* which cites “T. 554-555” purporting language that Principal White reported his

conversation back to Superintendent Short. The citation of “T.554-555” does not contain any reference to any conversation between Principal White and Superintendent Short. Other examples exist and are noted in the attached Exhibit A to this *John Freshwater’s Reply Brief to the Employers Post Hearing Brief*, titled, “Misstatements of Transcript Citations in the *Post-Hearing Brief for Mount Vernon City School District*”.

While a citation mistake may occur, it seems that the arguments made by the writer are failures which strike at the very essence of the proposed rationale reflecting that the arguments are without merit.

B. Other Factual Contentions

Attempting to reduce the “facts” from six thousand three hundred forty-four (6,344) pages into fifteen (15) pages necessarily implies “facts” will be omitted or indicates selective use of “facts” and turning a blind eye to challenging “facts”.

One fact is for certain: the *Post-Hearing Brief for Mount Vernon City School District* does not rely upon, make use of, and only sparingly references but one BOE Policy. This fact alone demonstrates John Freshwater is to be exonerated of the specifications as the standard for performance is the BOE’s work rules in the form of BOE Policies. Why did the representatives for the BOE fail to present evidence that John Freshwater actually violated BOE Policy? The answer is simple: John Freshwater did not actually violate a single, established, written policy or custom or practice of the Mount Vernon City School District.

1. Response to: The Use of the Tesla Coil (A.) (References to *Post-Hearing Brief for Mount Vernon City School District*)

On Page 3 dispute should be noted that Zach Dennis told Student Ben Nielson that Zach Dennis did not feel any pain after the Tesla Coil application except after Zach Dennis used his hockey equipment during hockey practice.³⁶

On Page 4, according to Principal White, John Freshwater initially denied anything occurred in his classroom. This is true, *nothing unusual happened in class*. As noted, this experiment and experience had been performed in John Freshwater's classes for over 20 years, as well as with and by other teachers who never reported any harm similar to that alleged by Zach Dennis.

On Page 4, Principal White's attribution to John Freshwater of the statement, "if they did it to him, it had to be in the shape of a cross," is an outlandish proposal considering not a single other eyewitness student corroborated this allegation. Nor did Principal White's January 22, 2008 letter make any notation of this allegation.

Regarding the assertion on Page 5, there were no other students who confirmed the allegation that, "those crosses are going to be there for a while".

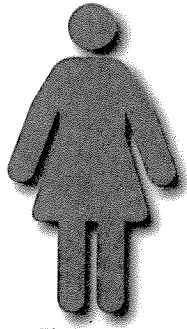
Page 6, the shape of a cross allegation presents more questions than representatives for the BOE have answers. Teacher Andrew Thompson looked at photos³⁷ and said the depictions looked like a cross, but what the photos depicted was not like "marks" he'd seen after John Freshwater used the Tesla Coil. Teacher Thompson's assessment is supported by other witnesses who testified they wanted to correct inaccuracies promoted by HR on Call, Inc. (See Diagram – "Witnesses Speak Out")

³⁶ Transcript Page 2646

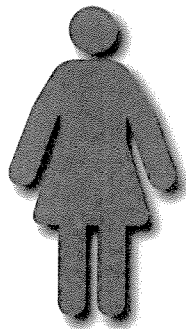
³⁷ Transcript Page 3009-3010

Witnesses Speak Out

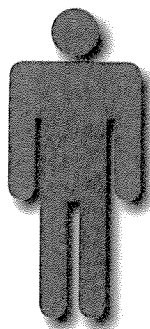
5 witnesses came forward because they wanted to correct inaccuracies perceived in the investigation.



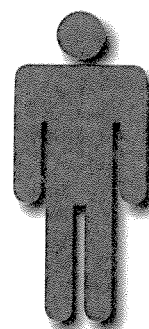
T. Henry
*1977



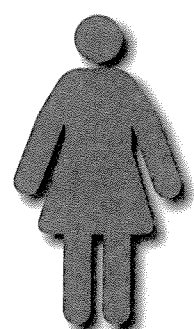
R. Frady
*5181



N. Thomas
*2201

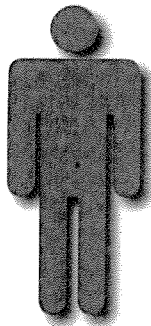


B. Nielson
*2650

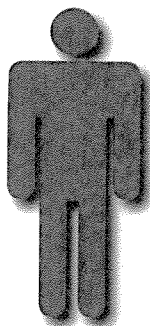


K. Mahan
*3734, 3727

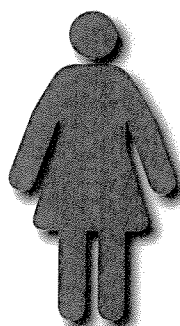
4 people close to Zach Dennis say that he never mentioned to them he had been harmed.



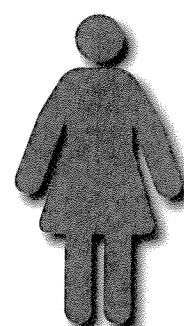
B. Nielson
*2650



R. Swanson
*2227

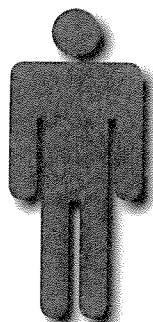


B. Spitzer
*1806

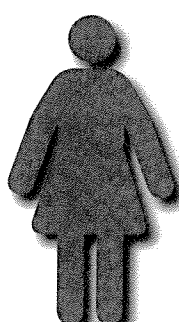


T. Redman
*5151

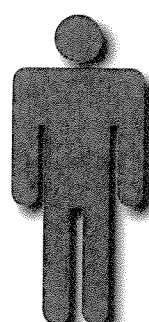
3 witnesses say photo of arm is not consistent with their observation.



C. Heck
*2176



A. Ruhl
*5249



B. Nielson
*2652

*Denotes Hearing Transcript

On Page 6, the author perpetuates a misunderstanding. To be certain, the use of the Tesla Coil does not leave any immediate evidence of a mark during the actual experiment. If a mark appears, it is not immediate, but rather appears some minutes later. Repeatedly during the hearing Attorney Millstone shifted the meaning of the term, “mark,” one time meaning “motion in the shape of” as though it were leaving a mark like a pen or pencil does, and then reinterpreting the term to “leaving a visible image”. Attorney Millstone’s “Squire Style” deliberately equivocates the language.

On Page 6, Student Taylor Strack’s testimony does not purport that John Freshwater held any student’s arm “down”, as if to prevent the student from moving. Student Strack does not corroborate Zach Dennis’ allegation and moreover, every other eyewitness from the class who testified each agreed John Freshwater did not hold any student’s arm down on the overhead, so Student Strack does not corroborate Zach Dennis. Other students unequivocally state Zach Dennis is lying. (See Diagram – “Credibility of Zach Dennis”)

2. Response to: Religion in Classroom (B.) (References to Post-Hearing Brief for Mount Vernon City School District)

a. Response to: Bible in classroom

Reliance upon statements by Interventionist Katie Beach, Observer James Stockdale or others fail to acknowledge BOE policies which permit acknowledgement, discussion, contemplation, and even a public teacher’s freedom to speak and share ideas, including their own opinion on the subject. So long as the teacher so states they are expressing a personal opinion, and are objective in presenting various sides of issues, a teacher permissibly may do so, pursuant to the Mount Vernon City School District Policy 3218 – Academic Freedom of Teachers, which states in its entirety,

Credibility of Zach Dennis

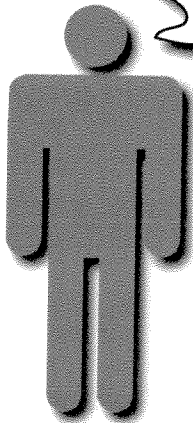
Eyewitness Testimony:

"...especially when you talk with the students, I believe kids are pretty honest."

T. Herlevi, HR on Call Investigator 1117: 3-4

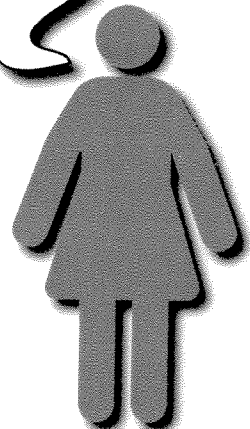
HR on Call chose not to interview these students.

"...Liar..."



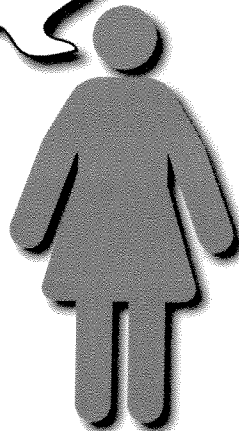
Cody Smith
*5309,
Employee Exhibit 116

"...Untruthful..."



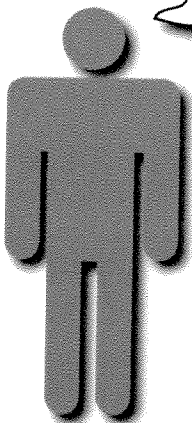
Allison Ruhl
*5243

"...Lying..."



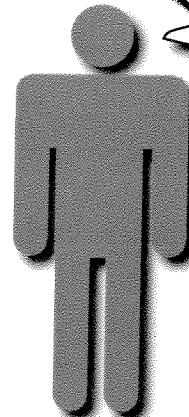
Tokala Redman
*5127, 5128

"...Lying..."



Josh Grubaugh
*5289

"...I think
he's lying..."



Jake Stotts
*5346

“The freedom to speak and share ideas is an inherent precept of a democratic society governed by the will of the majority. Teachers and students need to be free to discuss and debate ideas. When ideas that may be controversial are introduced, teachers, while having a right to their opinion on the subject, shall state it as such and they should be objective in presenting various sides of issues”.

John Freshwater was in full compliance with Policy 3218 – Academic Freedom of Teachers, if he did as alleged by Interventionist Beach or Observer Stockdale.

The author repeats on Page 10, Zach Dennis’ allegation that John Freshwater “lifted his Bible for the class to see.” This is in stark contradiction to nine (9) eyewitness classmates of his who say Mr. Freshwater never held up his Bible.³⁸ (See Diagram – “Credibility of Zach Dennis” supra)

b. Response to: Easter & Good Friday

Regarding Page 12, although Superintendent Short asserts he was in a meeting on the date John Freshwater’s note-card reflects an in-person meeting with Superintendent Short, no other corroborating evidence was submitted. John Freshwater is the only witness to have *actual* documentation that the meeting occurred on April 2, 2008. Nonetheless, any discussion about either Easter or Good Friday would be permissible lest representatives for the BOE attempt to ignore clearly established BOE Policy. BOE Policy 8800B – Religious Expression In The District, which was adopted according to and drawn from the “Statement of Principles” issued by the United States Department of Education, and endorsed by the National Education Association³⁹, permits teachers to teach about religious holidays, including the religious aspects of the holiday. Superintendent Short does not know the policies of his own school district or

³⁸ Transcript pages 5076, 5105, 5129, 5219, 5245, 5269, 5287, 5306, 5347

³⁹ Employee Exhibit 223 and 224

Superintendent Short maliciously turns a blind eye to the plainly stated language of BOE Policy 8800B, which specifically states in pertinent part,

*“Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by student”.*⁴⁰

Hiding from the facts does not make the facts go away. BOE Policy encourages an understanding of facts, specifically, religious holiday facts, pursuant to BOE Policy 8800 - Religious/Patriotic Ceremonies And Observances, which states in pertinent part,

*“Acknowledgement of, explanation of, and teaching about religious holidays of various religions is encouraged”.*⁴¹

c. Response to: Answers in Genesis

Regarding Page 14, representatives for the BOE using the “Squire Style”, fail to grasp they had a chance to ask former Principal Jeff Kuntz any questions regarding the uncorroborated, alleged, 1994 memo, labeled as Board Exhibit 84. Instead of clarifying any points about the alleged use of Board Exhibit 84, a shoehorn is used to bootstrap the exhibit into the hearing. Considering Principal Kuntz did not corroborate the document, the document was not part of John Freshwater’s personnel file as required for future use: and these BOE Policies 2240, 2270, 3218, 8800 and 8800B were not in existence in 1994, but now provide permission and latitude for any alleged use by John Freshwater. Further, if true as alleged, the context and intent of Board Exhibit 84 was never determined but existing standards would allow for use pursuant to the Academic Content Standard on Page 216, concerning “bias”.

⁴⁰ Employee Exhibit 169

⁴¹ Employee Exhibit 168

d. Response to: Watchmaker

Reliance upon Page 15, and the previously refuted hypothesis that somehow connects Student Maggie Wayne as having seen “The Watchmaker” video in John Freshwater’s class denies observance of the definitely certain facts that other eyewitness classmates of Zach Dennis assert they never saw the video in Teacher Freshwater’s science class. (Students Baer, Redman, Strack, Wells, Ruhl, Smith, Morris, Heck, Newland, Conkel, Grubaugh, and Stotts).

e. Response to: Debate Evolution / Creationism

“Teachers and students need to be free to discuss and debate ideas” so proclaims BOE Policy 3218.⁴² But on Page 16, representatives for the BOE seem to ignore public schools are a place for the debate of ideas. Combine the statement from BOE Policy 3218 permitting discussion and debate with BOE Policy 2240 which permits discussion of controversial issues, and it is plainly obvious a teacher in the Mount Vernon City School District can permit their students to be free to discuss and debate ideas, even those ideas related to evolution and creationism.

The “Squire Style” appears again on Page 16 but is in need of a subheading for the type of mischaracterization attributed to witness testimony that proclaimed to know how John Freshwater “felt”. An objection to the witness’ testimony was duly recorded in the record on Page 1331, Line 5-9, which was sustained, but the writer felt compelled to demonstrate their indignant attitude and include material that was not admissible. It is below even the described “Squire Style” to use material from a sustained objection prohibiting the use of the material to “make a point”.

⁴² Employee Exhibit 84

f. Response to: Expelled

In response to “facts” on Page 16, the unqualified expert Dr. Rissing never testified that he saw the movie. However, Dr. Rissing’s marvelous use of Slide 13 from Board Exhibit 113 demonstrated he too made use of “non-scientific” materials to teach science. Dr. Rissing also agreed that “context” was important in determining what was assigned or intended by a teacher. The context provided by John Freshwater for the assignment is well demonstrated because Teacher Freshwater used the exact language from the Academic Content Standard listed in Board Exhibit 37, Page 216. The real issue, which representatives for the BOE did not prove, nor did they have any evidence to support, was whether John Freshwater proselytized.

g. Response to: Souhrada Complaint

Former Superintendent Jeff Maley’s letter of June 8, 2006, was thoroughly addressed in *John Freshwater’s Closing Statement Brief* beginning on Page 119. There was absolutely no corroborated evidence that John Freshwater violated Superintendent Maley’s letter instructions nor that Witness Souhrada, a Columbus Dispatch Editor⁴³, had any evidence of a “persistent” issue other than those created by his newspapers repeated stories. Importantly, former Principal Tim Keib testified he investigated the matter at the time and did not find any proselytizing.

h. Response to: The Religious Display

Still, despite ample opportunity, nobody from the Mount Vernon City School District can precisely or adequately define a “display” of “religious materials”. Two attached Diagrams assist in understanding the confusion created by Superintendent Short and Principal White. First, who can define a “religious” display? The Diagram titled, “Defining a “Religious” Display: Part

⁴³ Transcript Page 877

Defining a "Religious" Display: Part 1

J. Freshwater was accused of having a "Religious Display" in his classroom and was given a "directive"...

Steve Short (71) A: The directive was to remove the religious displays, religious items that were part of – that were displays that were in the classroom.

So...what is or what constitutes a "Religious Display" ?

Former School Board President Ian Watson (5379-5380) A: It's an outward display of religious material that's trying to proselytize to those around the display.

Steve Short (75) A: I think at that point, with the number of things that were there, it was difficult to determine what was and wasn't on display.

So...is it the NUMBER of items that constitutes a display?

S. Hughes (5938-5939-5940) Q: What constitutes a religious display?.....A: Depends on what the item is.

Q: ...there's not a set number of items... that would constitute a religious display?..... A: Not for me.

Q: What factor is required for consideration?.....A: It would depend on what the items were.

So... it's NOT the number of items, it depends on the WHAT THE ITEMS ARE?

Steve Short (172-173) A: When you take the items as an individual piece, it's one thing. But when you look at a collective group... when you take those things as a whole and it doesn't deal with the science curriculum that he is teaching, then it becomes a display.

So... it is NOT the number of items, or what the items are, it has to do with their RELATIONSHIP TO CURRICULUM... so let's ask the district's Director of Teaching and Learning...

Weston (2598-2599) A: I would say a religious display is something that brings students' attention to information, and obviously if it's religious, it's from a religious tradition. It could be the Koran. It could be the Bible. It could be a Christmas display.

A: I would assume that law would cover that....General school law.

So... it's really just a LEGAL QUESTION, let's call in the experts and have them explain it...
Administration and BOE Attorney Millstone, held an August 2008 teacher in-service training on the subject to help clarify the issue.

Lori Miller (3947-3952) Q: When you left the in-service training, did you have clarity as to what you were allowed to do?..... A: No.

A: ...with many of us, many of us left kind of shaking our heads, because even several teachers... had asked specific questions about specific situations, and they weren't answered. There were many times Mr. Millstone said, You know what? I'm not sure.

A: ...there were many teachers that kind of left going, well, we still don't know exactly what the policy is exactly, you know. Just I think many of us left still feeling very, very vague.

So... if it isn't the number of items, nor its relation to curriculum, and legal experts can't explain it, maybe we should assume it's just to VAGUE to enforce...

Wes Elifritz (2849-2850) A: ...At the very beginning of this past school year... August '08, Bill White had, ...our first staff meeting ... about make sure that we were careful with our religious displays and making sure we removed anything that was in clear view of the students.

So... it must be that the items just need to be kept out of clear view?
Wes Elifritz on why he was instructed to "move" (not remove) a "religious item" from one wall to another within his classroom. (2830)

Wes Elifritz (2849-2850) A: ...I was informed that our three administrators had taken a trip through the building just to check out each room, and they had essentially came to the conclusion amongst the three of them that they all thought that this was a religious display or that those were religious lyrics. They believed that that was a religious song or religious lyrics or religious poem, so that's why I was told to move them.

Defining a "Religious" Display: Part 2

So... if it isn't the number of items, nor the items themselves, nor their connection to curriculum, and the legal experts can't explain it, and you don't have to keep them out of clear view... WHAT IS IT?

Bill White (530-531)

A: "I don't have the policy memorized, but I know where to find it."

So... if it is as simple as going to find it in the policy... WHAT WILL WE FIND?

Andrew Thompson seeks clarity (2875-2876)

A: ...Lori Miller, Wes Elifritz, and myself had a meeting with.. Mr. White and Mr. Ritchey...Lori Miller brought up the question of what is religious display, to which Mr. White said that he would have to get back to us on that, because, in his mind, it was basically what he or the administration felt was a religious display. And Wes Elifritz then asked, So you're basically telling us that what you feel is a religious display is a religious display? And he did not want to answer that question, so he said they would have to get clarification on what a religious display was.

Q: Did they ever give you anything?..... A: No.

Q: Did they ever give you any kind of response at all?..... A: No.

So... I guess he couldn't find it after all?

So... if it isn't the number of items, nor the items themselves, nor their connection to curriculum, and the legal experts can't explain it, and you don't have to keep it out of clear view, and no one seems to know the answer... it must be up to INTERPRETATION?

S. Hughes (5939-5940)

A: If that is a reasonable interpretation, then I think it does [make it a religious display] for that person.

Q: Where does that reasonable interpretation come from?..... A: On the individual.

Miller (3951-3952)

Q: Miss Miller, when you met at the beginning of the school year back in August with Mr. Short... you assured him that your Bible was not part of a display on your desk. Is that correct?..... A: Yes...

Q: And, therefore, you didn't ask him if you could put it on your desk. You asked him if you could keep it on your desk. A: Yeah.

Q: And he said yes when you assured him it was not part of a display? A: Correct.

So... a teacher just has to tell the administration what is and is not a display?

Maley (2322) A: "I believe a religious display is what people believe it is..."

So... how would a teacher let administration know if they have a "religious display"?

Mr. Molnar (5383)

Q: What's the importance of purpose in determining whether or not something is deemed a religious display?

A: Again, with religious display... is the intent of displaying it,... So, again, anything that is shown that might have a question about having a religious appearance and nature, there's obviously a purpose of why it's up, so the purpose is important... to determine whether it's a religious display or not.

Q: How do you get to find out the purpose?

A: Ask the question to the staff member who put it up.

That seems simple enough.

So... did anyone think to just ask John Freshwater what was the purpose of the items in his room?

A. NO!

1 and 2,” presents the multifaceted levels of incompetence surrounding the issue in the Mount Vernon City School District. Note that the confusion was created by the administrative leaders and former BOE members. Examination of the Diagram titled, “Religious & Philosophical Items Identified” correctly demonstrates fifteen (15) school employees maintained a Bible in their classroom, eight (8) school employees maintained the George Bush/Colin Powell patriotic poster in their workspace, nine (9) school employees maintained Bible scripture verses in their work space, and two (2) teachers maintained more “religious” or “philosophical” items in their workspace than did John Freshwater.

How can John Freshwater be chastised for failing to follow a lawful order when those responsible for clarifying the directive cannot competently answer any questions about the missive and treat other teachers differently?

3. Response to: FCA (D. (sic) (References to Post-Hearing Brief for Mount Vernon City School District)

On Page 19 is another fallacy example of the Irrelevant Thesis: which claims to first have had issued “training”, but subsequently shifts to “review”. The terms are hardly equivalent.⁴⁴ Former Principal Kuntz did not even know where the “review” was from, be that policy or otherwise.

4. Response to: Insubordination (E. (References to Post-Hearing Brief for Mount Vernon City School District)

The narration on page 19 exhibits continuing distortions of fact. Contrary to what is misrepresented, even Superintendent Steve Short recognized that the April 7, 2008 directive was

⁴⁴ Transcript Page 3827

"Religious" & "Philosophical" Items Identified

STAFF	BUSH/POWELL POSTER	OTHER MOTIVATIONAL OR INSPIRATIONAL POSTERS	DEVOTIONALS	10 COMMANDMENTS	SONG LYRICS**	POEM: "CHRISTIANS" by MAYA ANGELOU	CROSS	HAND WRITTEN NOTES	SCRIPTURE VERSE(S) STAND ALONE	FCA BIBLES & OTHER FCA ITEMS STORED IN ROOM	JESUS PICTURE	BIBLE
MIDDLE SCHOOL												
J. Freshwater *444:13, 4355:18, 4419:12, 4411:2, 441:4	✓	✓		✓						✓		✓
L. Miller *2873, 2368,2397, 2398, 2365-2366, 2395-2396	✓	✓	✓				✓	✓	✓			✓
W. Ellifritz *2823, 2828, 2873		✓		✓	✓	✓			✓			✓
T. Henry *1990												✓
J. Marth *2024-2027		✓		✓								
S. Malone *2050												✓
A. Thompson *2871												✓
L. Small *3632, 3633												✓
D. D'Ettore *1786, 1763	✓											✓
T. Keib *3631	✓											✓
B. Sanders *2098, 2877	✓						✓		✓			
B. Cronk *1810												✓
J. Clinger *2870												✓
C. Murphy *2873									✓			
S. Jenkins *3632												✓
HIGH SCHOOL												
D. Carter * 2125	✓											
S. Dapritch *2146, 2142									✓			✓
H. Dean *2147									✓			✓
B. Gustin *2076, 2078, 2080-2081	✓								✓		✓	✓
Ms. Smith *2147									✓			
Common Areas Hallway Bulletin Board *2082	✓											
ADMINISTRATION												
S. Short *300									✓			

* Denotes Hearing Transcript

** Song Lyrics: "Everlasting, Your light will shine when all else fades. Never ending, Your glory goes beyond all fame... And the cry of my heart is to bring you praise..."

insufficient for action, and that Mr. Freshwater sought clarification from Principal White on April 11, 2008. According to Superintendent Short, Mr. Freshwater asked for sufficient time to take the items down, so Principal White set April 16th as the due date.⁴⁵ The meetings between Mr. Freshwater and Principal White were not witnessed by third parties, and the BOE representative continues to ignore the one written and two verbal appeals for a reason to remove the Bible from his desk.

The author makes much ado about the two books checked out from the Middle School library on page 20. The Oxford Annotated Bible actually *is* different from John Freshwater's personal Bible. The Oxford Bible is a *translation*, and includes the Apocrypha (commonly included between the Old and New Testaments in Catholic Bibles, but is not present in non-Catholic Bibles), while Mr. Freshwater's Living Bible is actually a *paraphrased* version and does not include the Apocrypha.

Harry Emerson Fosdick, author of *Jesus of Nazareth*, was an apostate, active in the modernist movement. A prolific writer, he argued against the inspiration and authority of the Bible and against the deity of Christ. His book titled, *Jesus of Nazareth*, would not be "religious" or devotional; at best, it would be a simple biography.

Author Fosdick's view of science and the Bible would certainly be in line with any secular scientific publication. As "a convinced believer in evolution" (*Harry Emerson Fosdick: Preacher, Pastor, Prophet* by Robert Moats Miller), author Fosdick has a high opinion of science as truth and scoffs at those who believe the Bible over science. In Fosdick's famous sermon "*Shall the Fundamentalists Win?*", Fosdick states, "Ministers often bewail the fact that

⁴⁵ Transcript Page 291

young people turn from religion to science for the regulative ideas of their lives. But this is easily explicable. Science treats a young man's mind as though it were really important. A scientist says to a young man, 'Here is the universe challenging our investigation. Here are the truths which we have seen, so far. Come, study with us! See what we already have seen and then look further to see more, for science is an intellectual adventure for the truth.' Can you imagine any man who is worthwhile turning from that call to the church if the church seems to him to say, 'Come, and we will feed you opinions from a spoon. No thinking is allowed here except such as brings you to certain specified, predetermined conclusions. These prescribed opinions we will give you in advance of your thinking; now think, but only so as to reach these results.' ”

The book *Jesus of Nazareth* would in no way be a challenge to evolutionary thinking or teaching, and it is only religious if one pretends to know that the book's message is the same as what one pretends to know are John Freshwater's beliefs. Given Fosdick's views, one might expect the Administrators to be pleased for the presence of *Jesus of Nazareth* in a science classroom as it is a non-religious book.

V. **Response to Argument Stated in Post-Hearing Brief for Mount Vernon City School District**

A. **Response to Tesla Coil**

John Freshwater's well-articulated response is detailed in *John Freshwater's Closing Statement Brief* on Pages 63-79, where it is shown that the charge is unsubstantiated.

In its brief, the BOE Counsel makes arbitrary assertions, appeals to ignorance, and attempts to foist the burden of proof onto John Freshwater. On Page 21, the BOE Counsel lists accurate reasons for why the charge should be unsubstantiated, but then carelessly dismisses the reasons. BOE counsel **arbitrarily** asserts on Page 22 that Zach Dennis was injured, and

outrageously asserts that John Freshwater needs to provide evidence that Zach Dennis was *not injured*. This is the fallacious **appeal to ignorance**, and he has this backwards, of course, since the burden of proof is upon the BOE counsel. (See Diagram – “Tesla Coil Red Flags”)

We would also point out the reasoning in Footnote 6, Page 22, is confused and misleading. By the time the Dennis' photograph was published in the newspaper on June 20, 2008, (Mount Vernon News in color, and Columbus Dispatch in black and white) the identity of Zach Dennis was universally known in the school, despite the “official” anonymity of the family. Several witnesses attested to the fact that John Freshwater refused to disclose the name of his accuser. In addition to Ben Nielson, student Tokala Redman also knew Zach Dennis' identity in relation to the Tesla Coil at an early date⁴⁶.

In response to the identified specification of the charge listed in the BOE’s resolution, as required and limited by R.C. 3319.16, balanced by the clear and convincing standard or any other, John Freshwater was not willfully nor persistently in violation of any identified reasonable regulation of the BOE; nor do any of his actions constitute other good and just cause based upon the requisite intent. Therefore, the specifications in section (1) one of the BOE’s *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* must be deemed **unsubstantiated**.

B. Response to Religion in the Classroom - John Freshwater Did NOT Proselytize

In response to the BOE’s brief that John Freshwater introduced or taught religion in the classroom, representatives for the BOE fail to grasp the essential difference between an 8th grade science teacher’s instruction regarding the correct application of the scientific method versus an

⁴⁶ Transcript Page 5132

Tesla Coil Red Flags

- #1** NO other adult (except ZD's parents) ever saw mark on arm
- #2** NO administrator or board member talked to the child about the alleged incident
- #3** NO administrator or board member ever asked to see the child's arm
- #4** NO professional medical attention was ever requested or given the child for alleged incident
- #5** NO medical history was ever requested or provided to verify discoloration on arm
- #6** NO other student in the same classroom ever confirmed ZD's story of incident
- #7** NO other student who saw ZD's arm or talked with him about it ever confirmed proposed "severity" of supposed mark
- #8** NO "potential abuse" was ever reported to any agency
- #9** NO disciplinary action was suggested or taken by administration
- #10** NO mention of "cross" until 5 months after the incident
- #11** NO mention of "holding down arm" until 10 months later Columbus Dispatch article
- #12** NO investigation of misconduct was ever requested or implemented by OBE, Children Services, or other agency (HROC hired by BOE attny)

8th grade science teacher's permissible acknowledgement of historical assertions. Scientific proof and the scientific method are based upon a showing that something is a fact by repeating the event in the presence of the person questioning the fact.⁴⁷ Scientific method is related to the measurement of phenomena by experimentation or repeated observation. But the process of scientific method can only enjoy a limited discussion in an 8th grade science class because students present their personal "bias" as to their understanding of other forms of "facts".⁴⁸ Even the unqualified expert witness for the BOE, Dr. Faber admitted, 8th grade students bring their "bias" into the 8th grade public school classroom⁴⁹ and stated, "The teacher has to field questions that may be biased by the students".⁵⁰ (emphasis added) Unqualified expert witness Dr. Faber further admitted, 8th grade students are, "At that age, they're all over the place. You have some that can reason concretely and you have some that can reason abstractly".⁵¹ But even the unqualified expert witness Dr. Faber readily acknowledged, that if an 8th grade science teacher like John Freshwater is presented with "...these questions from all over the place...", Teacher Freshwater and other public school teachers, are "...allowed to answer them" (the student's questions).⁵²

Moreover, Dr. Princehouse, another unqualified expert witness for the BOE, admitted the world views of 8th graders when they enter into an 8th grade science classroom, "I think they're very diverse".⁵³

⁴⁷ Employee Exhibit 112, Page 172-174 and Employee Exhibit 113, Page 192-195, Employee Exhibit 114, Page 198-200

⁴⁸ Transcript Page 1408

⁴⁹ Transcript Page 1408, Line 10-12

⁵⁰ Transcript Page 1408, Line 15-16 and Page 1409, Line 2-5

⁵¹ Transcript Page 1408, Line 21-23

⁵² Transcript Page 1409, Line 6-10

⁵³ Transcript Page 1612, Line 11-13

If the scientific method were the only manner and method of determining facts, a person could not even prove they had lunch on any given day as there is no way to repeat the act of eating lunch for any particular day which has already occurred, meaning the act to be tested is history and not capable of quantifiable reproduction using the scientific method.

In contrast to analysis provided by applying the scientific method, there are other manners of establishing facts, one of which is the historical proof method. Mount Vernon City School Policies (the plural form of “policy”, meaning a grammatical form that designates more than one of the things specified) permits *all* teachers – including 8th grade science teachers – to comment upon, make use of and otherwise instruct any grade level of students upon, “*An understanding of religions...*”⁵⁴ Religion is not testable by the scientific method but students at the 8th grade struggle to comprehend the difference between concrete and abstract analysis. However, no less than five (5) Mount Vernon City School District Policies address the word or concept of “religion” in the classroom.

Mount Vernon City School District Policy **2270 - Religion In The Curriculum**, states in paragraph two of six,

*“**An understanding of** religions and their effects on civilization is essential to the thorough education of young people and to their appreciation of a pluralistic society. To that end, curriculum may include as appropriate to the various ages and attainments of the students, instruction about the religions of the world”. (emphasis added)*

Mount Vernon City School District Policy **8800 - Religious/Patriotic Ceremonies And Observances**, states in paragraph three of seven,

⁵⁴ Employee Exhibit 9 – POLICY 2270 – Religion in the Curriculum, Mount Vernon City School District Bylaws and Policies

“Acknowledgement of, explanation of, and teaching about religious holidays of various religions is encouraged”. (emphasis added)

Mount Vernon City School District Policy **8800B - Religious Expression In The District**, states in paragraph eight of fifteen,

“Teaching about Religion: Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects.

Similarly, it is permissible to consider religious influenced (sic) on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students”.

Mount Vernon City School District Policy, **2240 - Controversial Issues**, states in paragraph two of nine,

“Properly introduced and conducted, the consideration of such issues can help students learn to identify important issues, explore fully and fairly all sides of an issue, weigh carefully the values and factors involved, and develop techniques for formulating and evaluating positions”. (emphasis added)

Mount Vernon City School District Policy, **3218 - Academic Freedom Of Teachers**, states in paragraph two of two⁵⁵,

“When ideas that may be controversial are introduced, teachers, while having a right to their opinion on the subject, shall state it as such and they should be objective in presenting various sides of issues”. (emphasis added)

The only required prohibition attached to the word “religion” or “religious” in the public schools of the United States of America, to include the Mount Vernon City School District, is

⁵⁵ Employee Exhibit 84

that any classroom instruction regarding “religion” or “religious” aspects must be neutral,⁵⁶ not be devotional⁵⁷ and the public school teacher cannot proselytize⁵⁸. There was no evidence anybody was converted from one religion to another by John Freshwater. In contrast, Teacher Dino D’Ettore testified he actually talked about the “salvation message” with students,⁵⁹ and that he personally prayed with sixty (60) students as the student prayed the “salvation” prayer⁶⁰.

Students from John Freshwater’s classes testified as follows: Student Maggie Wayne testified “No religion was ever promoted in the classroom”.⁶¹ Student Lori Hubbell stated, “John Freshwater never spoke about religion, never made references to God and I never seen a Bible on his desk”.⁶² Student Kayla Wells affirmed, “John Freshwater never talked about anything religious in his class”; and “we never used the website answers in genesis in class”.⁶³ Student Tokayla Redman confirmed, “I never heard any religious discussion with him I would know because I go to church”. And “He (John Freshwater) never held his bible (sic) up or referenced to the ten commandments or his bible (sic)”.⁶⁴ Student Aaron Morris testified, “I seat (sic) in the front row and never seen a bible (sic). God was never spoken about in class”.⁶⁵ Student Jake Stotts affirmed, “I didn’t even know there was a bible (sic) there. He (John Freshwater) never

⁵⁶ Employee Exhibit 9 – POLICY 2270 – Religion in the Curriculum, Mount Vernon City School District Bylaws and Policies, Paragraph 3, Line 4-6, which states, “The Board directs that professional staff members employing such materials be neutral in their approach and avoid using them to advance or inhibit religion in any way”.

⁵⁷ Id. at Paragraph 1, Line 1-2

⁵⁸ Employee Exhibit 70 – FINDING COMMON GROUND, Page 82, Paragraph 5, Line 7-11, “In any case, the teacher may answer at most with a brief statement of personal belief – but may turn the question into an opportunity to proselytize for or against religion”.

⁵⁹ Transcript Page 1775

⁶⁰ Transcript Page 1780-1782, specifically Line 9, “Personally, it could be as many as 60 students”.

⁶¹ Employee Exhibit 196

⁶² Employee Exhibit 181

⁶³ Employee Exhibit 186

⁶⁴ Employee Exhibit 189

⁶⁵ Employee Exhibit 204

talked about god (sic) at all”.⁶⁶ Student Allison Ruhl testified, “There was no preaching or holding up of a Bible. There was nothing talked about intelligent design, God or creation”.⁶⁷

Student Corbin Heck affirmed,

*“In class John Freshwater never taught from the Bible. John Freshwater taught evolution and I never felt pressure by JF to believe anything other than evolution. John Freshwater was the best science teacher I ever had and I never felt like John Freshwater taught religion. I am a Christian and I would know if he did. John Freshwater never talked about Noah’s flood. Some kid asked about Easter. John Freshwater said “go ask your parents”. John Freshwater never brought it (Easter) up. I roughly remember John Freshwater had a Bible on his desk but he never pulled the Bible out”.*⁶⁸

Student Ben Nielson stated, “During class John Freshwater never pushed creationism or intelligent design”.⁶⁹ Student Taylor Strack confirmed,

“No”, John Freshwater did not say anything about God in class. “No”, I do not remember anything being said by John Freshwater about “creationism” or “intelligent design”. “Never” did John Freshwater say anything about his “beliefs of God” while in science class or any place I heard him speak. “No, never” did I feel “any pressure” about God or religion. John Freshwater “just gave scientific reasons.”

The scientific method can be used to prove only repeatable events and is not an adequate form of analysis for proving or disproving events in history. However, students – 8th grade students – bring into the classroom their bias about “scientific facts” and other “facts,” and an 8th grade teacher like John Freshwater must overcome a student’s “bias” to properly instruct the parameters of the scientific method. John Freshwater could and did explain the remarkable difference between facts ascertained through analysis by the scientific method and any “fact” alleged by a student but obtained without the tenets of scientific method. John Freshwater was

⁶⁶ Employee Exhibit 207

⁶⁷ Employee Exhibit 194

⁶⁸ Employee Exhibit 23

⁶⁹ Employee Exhibit 45

able to explain this difference between facts determined through the scientific method and “facts” presented pursuant to any other method of analysis. Teacher Carrie Mayhan testified John Freshwater was always teaching the scientific method, “That was the thread in everything that he did. He was always going back to that”.⁷⁰

No matter what castigation has been made or alleged, John Freshwater taught the Academic Content Standards as required. According to the OAT scores of students taught by John Freshwater it is obvious Teacher Freshwater has done and will continue to do an outstanding job of teaching. (See Diagram – “Staff/Teachers/Administrators Called as Witnesses”)

1. Response to: Teaching Creationism and Intelligent Design

John Freshwater’s well articulated response is detailed in *John Freshwater’s Closing Statement Brief* on Pages 79 – 133.

a. Response to: Answers in Genesis

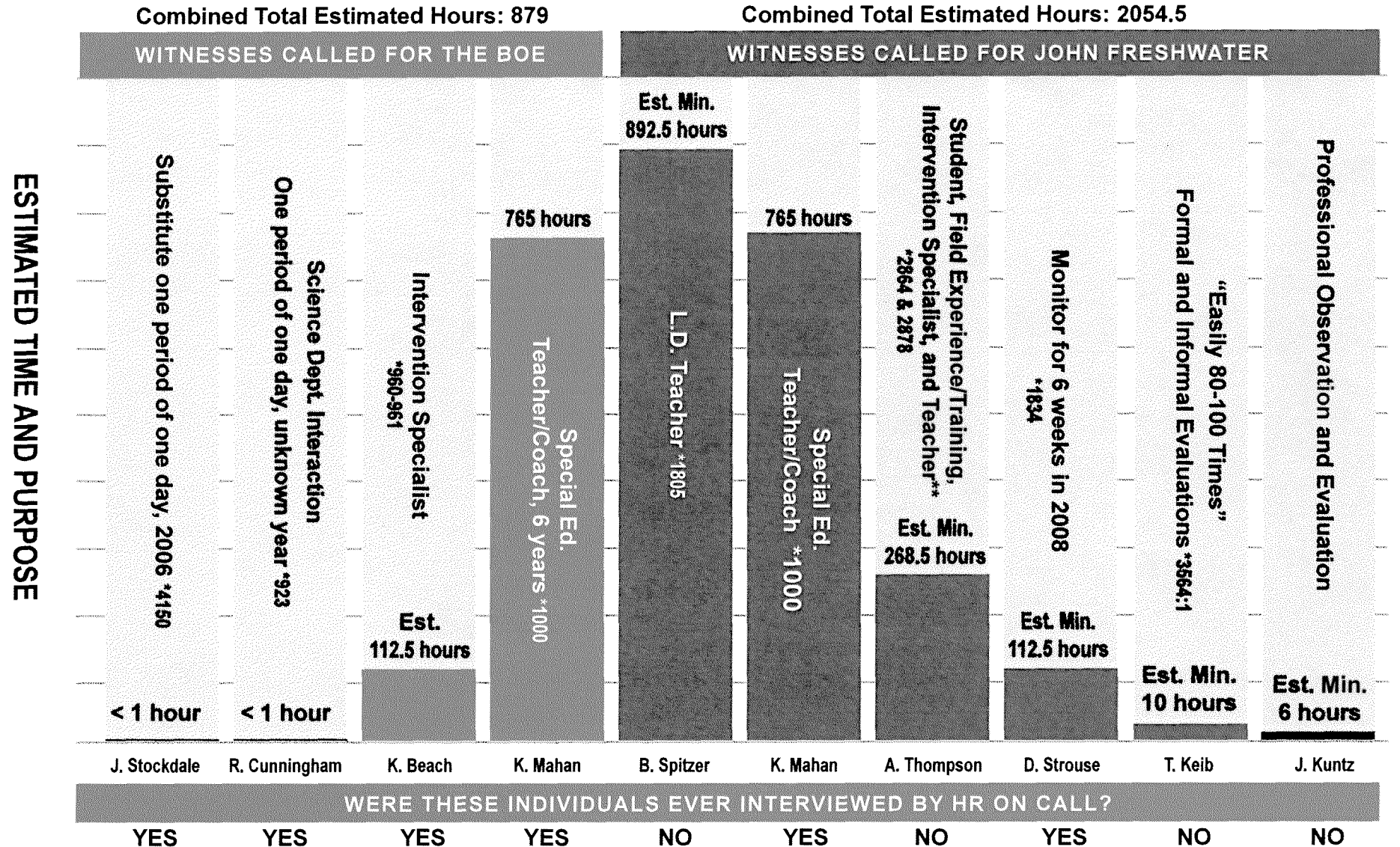
On Page 27, the BOE counsel rhetorically asks, “Which story told by John Freshwater does one believe?” Actually, it is not necessary to consult John Freshwater on this matter at all, since the only witness to assert this event is Zach Dennis, and there is no corroboration, whether from other witnesses, documentation or otherwise. The dissertations from the expert witnesses Princehouse and Rissing might be interesting or amusing, but they are simply irrelevant.

Two other students and classmates of Zach Dennis - Student Kayla Wells and Student Taylor Strack - were asked about Answers in Genesis. Student Wells stated she never visited the

⁷⁰ Transcript Page 3742-3743

Staff/Teachers/Administrators Called as Witnesses

Time spent in personal observation of John Freshwater's classroom instruction



HR on Call failed to interview teachers & administrators with significant time in JF's classroom or even a single member of JF's 'teaching team' *1979

* Denotes Hearing Transcript

** Denotes a portion of A. Thompson's time in the classroom includes as a student but is included because of his unique perspective as student, intervention specialist, and teacher.

Based on 45-minute class period and 3.75 hours of academic instruction per day.

website during class,⁷¹ and Student Strack stated that no students were assigned to look things up at the site, and she had never been to the site.⁷²

Any assertion that John Freshwater referred a dozen students to the website fails for two reasons: there are no witnesses identified; and two, John Freshwater was referring to a group of “students, adults” he traveled with to a museum related to the website.⁷³

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of the website, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,⁷⁴ speak about religion in a neutral manner,⁷⁵ debate,⁷⁶ be objective in presenting various sides of issues,⁷⁷ acknowledge and explain religious holidays,⁷⁸ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.⁷⁹

This specification is unsubstantiated.

b. Response to: The Watchmaker

Zach Dennis claims John Freshwater showed a video called *The Watchmaker*, both at FCA and in science class.⁸⁰ Apparently, the video advocated creationism and/ or religion. On

⁷¹ Transcript Page 5100

⁷² Transcript Page 3865

⁷³ Transcript Page 4614-4615

⁷⁴ Employee Exhibit 81

⁷⁵ Employee Exhibit 9

⁷⁶ Employee Exhibit 84

⁷⁷ Employee Exhibit 84

⁷⁸ Employee Exhibit 168

⁷⁹ Employee Exhibit 169

⁸⁰ Transcript Page 3128:7,9

her first appearance at the hearing, Teacher Mahan said students saw *The Watchmaker* in class;⁸¹ however, on her second appearance, Teacher Mahan clarified her recollection of the video may have been at an FCA meeting, not in class.⁸² Hence, the BOE counsel's assertion on Page 29 that Teacher Mahan's uncertainty corroborates Zach Dennis is not accurate.

Both Teacher Andrew Thompson and FCA leader Student Jordan Freshwater agree that Jordan showed this movie in an FCA leadership meeting.⁸³ Twelve students from Zach Dennis' class say they have never seen *The Watchmaker*: Students Baer, Redman, Strack, Wells, Ruhl, Smith, Morris, Heck, Newland, Conkel, Grubaugh, and Stotts.⁸⁴

BOE counsel attempts to illogically deduce Student Maggie Wayne's true venue when she saw the video, but as we pointed out before, the argument is **invalid due to the fallacy of bifurcation**. The author of the BOE's brief errs in assuming that there were only two possible contexts in which the video could have been seen – FCA or science class – but the video is freely available on the internet, so the occasions on which the student could see the film are unlimited.

Thus, there is no corroboration for another of Zach Dennis' allegations, and even in this instance, a dozen classmates who have *never* seen *The Watchmaker*. This allegation regarding *The Watchmaker* counts toward another unlawful specification enlargement by representatives for the BOE, but also counts as yet another previously unaccounted for unproven, allegation by Zach Dennis, which in turn becomes exculpatory and now the score would now be 7-8: fifteen (15) allegations made by Zach Dennis for which eight (8) were definitely, one hundred (100%) percent without credibility.

⁸¹ Transcript Page 1006

⁸² Transcript Page 3734

⁸³ Transcript Page 1691:11; 1692:1 and 2898:12-14

⁸⁴ Transcript Page 5071:3; 5119:24; 3848: 7-17; 5104:25; 5241:6;5303:17; 5323:6; 2190:14;5031:16; 5216:6; 5286:2; 5343:12

The opinions of Dr. Princehouse on the content of the short video are irrelevant.

It is not true that Zach Dennis saw *The Watchmaker* in class.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of the video, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,⁸⁵ speak about religion in a neutral manner,⁸⁶ debate,⁸⁷ be objective in presenting various sides of issues,⁸⁸ acknowledge and explain religious holidays,⁸⁹ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.⁹⁰

An allegation from an impeached witness is unsubstantiated.

c. Response to: Debate

John Freshwater agrees that this debate happened. Teacher Mahan, intervention specialist, was present. Teacher Mahan relates that the creation versus evolution debate occurred the day after a student expressed interest; students were to come in with evidence to support their position.⁹¹ Only the students discussed the topic⁹² and, since the one particular student originated the debate, it occurred only in Zach Dennis' 8th period class. Debates were not a

⁸⁵ Employee Exhibit 81

⁸⁶ Employee Exhibit 9

⁸⁷ Employee Exhibit 84

⁸⁸ Employee Exhibit 84

⁸⁹ Employee Exhibit 168

⁹⁰ Employee Exhibit 169

⁹¹ Transcript Page 4621

⁹² Transcript Page 1002

regular part of class. Andrew Thompson, intervention specialist as well as a former Freshwater student, does not recall having debates in John Freshwater's class.⁹³

The BOE counsel makes a **faulty appeal to authority** by bringing in Dr. Faber and Dr. Princehouse. These Board witnesses testified that debate was not a good way to teach science, but neither of them had experience in middle school classrooms.⁹⁴ Debate is a common teaching tool in middle school. Teacher Mahan claims "We use it in many subjects. I know that science, social studies, language arts, we have hot topics that we talk about".⁹⁵ Science teacher D'Ettore sometimes uses debate in his class⁹⁶ and Teacher Lori Miller used debate in her science class.⁹⁷ Even Administrator Dr. Weston used debate.⁹⁸

Finn Laursen, expert witness, says debate ought to be encouraged in the classroom, to bring different views to the table; a master teacher would use it to bring a higher level thinking.⁹⁹

BOE counsel claims on Page 31 that this "debate" is "in direct conflict" with BOE Policy, but no Policy is cited. To the contrary, Mount Vernon City School District Policy 3218: "Academic Freedom of Teachers" *encourages* debate.

"The freedom to speak and share ideas is an inherent precept of a democratic society governed by the will of the majority. Teachers and students need to be free to discuss and debate ideas".

Pursuant to the analysis in the BOE brief, unqualified expert Dr. Princehouse, evolutionary biologist, could be accused of teaching creationism, too. She has taken her students

⁹³ Transcript Page 2990

⁹⁴ Transcript Page 6114:12 and 1373:23

⁹⁵ Transcript Page 3746:22-25

⁹⁶ Transcript Page 1773

⁹⁷ Transcript Page 2425

⁹⁸ Transcript Page 2598

⁹⁹ Transcript Page 3889

to a creation museum because it is “*educational*”.¹⁰⁰ “I take them there so that they will be exposed to the arguments that are generally put forth by creationists. I would like to see folks overcome the animosity, and I think that this can best be done through discussion”.¹⁰¹

BOE counsel’s assertion on Page 30 that “John Freshwater offered creationism as one option or alternative to evolution” is a mischaracterization of Interventionist Beach’s testimony.¹⁰² Ms. Beach never used the term *creationism*, or any synonym.

The BOE’s brief presents an illogical, irrational argument that John Freshwater committed an act in violation of BOE Policy when an actual BOE Policy – Policy 3218 - specifically *endorses* the act.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of debate, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹⁰³ speak about religion in a neutral manner,¹⁰⁴ debate,¹⁰⁵ be objective in presenting various sides of issues,¹⁰⁶ acknowledge and explain religious holidays,¹⁰⁷ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁰⁸

d. Response to: Biblical Alternatives to Big Bang and Evolution

¹⁰⁰ Transcript Page 1627

¹⁰¹ Transcript Page 1627-1628

¹⁰² Transcript Page 1002

¹⁰³ Employee Exhibit 81

¹⁰⁴ Employee Exhibit 9

¹⁰⁵ Employee Exhibit 84

¹⁰⁶ Employee Exhibit 84

¹⁰⁷ Employee Exhibit 168

¹⁰⁸ Employee Exhibit 169

John Freshwater's well-articulated response is detailed in *John Freshwater's Closing Statement Brief* beginning on Page 129.

John Freshwater DID NOT teach creationism or challenge evolution.

While it is alleged that John Freshwater undermined and made evolutionary theory sound untruthful, Teacher Andrew Thompson, who had John Freshwater as a teacher and also, as an intervention specialist, and sat daily in John Freshwater's class, says that, in Teacher Thompson's first-person experience, that was not the case.¹⁰⁹

"I would say John taught evolution as well, if not better than any...science teacher that I learned from....He knows about evolution. He knows the standards he has to cover, and he taught it very well".¹¹⁰

Teacher Thompson does NOT agree that John Freshwater presented both sides of evolution (meaning "teach both sides").¹¹¹

Former Student Nathan Thomas also testifies that John Freshwater would acknowledge that there are non-scientific explanations for the origin of the universe. When Nathan Thomas says "present both sides," he explains that John Freshwater would acknowledge the existence of a Biblical explanation, but then *teach* evolution and the textbook supported Big Bang Theory.¹¹²

As to Interventionist Beach's testimony regarding the Big Bang (a topic in the 8th grade textbook¹¹³) and the mention of alternative explanations for the origin of the universe, we point out that the mere *mention* of alternatives does not constitute teaching the alternatives. Making

¹⁰⁹ Transcript Page 2972

¹¹⁰ Transcript Page 2945

¹¹¹ Transcript Page 2997

¹¹² Transcript Page 2208 and Employee Exhibit 112

¹¹³ Employee Exhibit 112

the students aware of alternative explanations is in fulfillment of the NSTA position statement quoted in Board Exhibit 6, Page 3,

“Science teachers should not advocate any religious view about creation, nor advocate the converse: that there is no possibility of supernatural influence in bringing about the universe as we know it. Teachers should be nonjudgmental about the personal beliefs of students.”

As noted, the students themselves bring to the class their own Biblical beliefs, and John Freshwater’s actions are an appropriate *nonjudgmental* response to these students. On Page 32, BOE counsel brings five students to testify against John Freshwater. In doing so, the BOE’s counsel is committing the fallacy of uncorroborated witnesses, for no two witnesses even claim to be eyewitnesses of the same event, and the statements attributed to them do not agree.

To the contrary, a number of students and teachers, who do experience the same event, attest that John Freshwater never taught religion: Taylor Strack, Miranda Baer, Andrew Thompson, Deb Strouse, Tim Keib Corbin heck and Kayla Wells.¹¹⁴

Further on Page 32, BOE counsel misrepresents the questionnaires filled out by Teacher Bonnie Schutte’s students as “objective.” Perhaps this was a typographical error, because the proper characterization of Teacher Schutte’s questionnaire analysis would be to label her work as “subjective” in that the students’ opinions interpreted by Teacher Schutte, who guessed, which students had been taught by John Freshwater. A more accurate example of “objective” evidence would be OAT scores, as described in *John Freshwater’s Closing Statement Brief* on Page 80-82. (See Diagram – “Bonnie Schutte’s Misinterpretation of Questionnaires: Part 1 and Part 2”)

¹¹⁴ Transcript Page 3858, 5076, 2879, 1831, 3629, 2188, 5100

Bonnie Schutte's Misinterpretation of Questionnaires: Part 1

These surveys were the only evidence Bonnie Schutte was able to produce regarding the allegation that John Freshwater was teaching Creationism. *1315:16-19

These student survey responses DO NOT IDENTIFY which 8th grade science teacher the student had. *789
She admits that "These are just my interpretations" *782:2 of student responses.

Student Survey 8th Grade Science	→ B. Schutte's Interpretation	Hearing Witness Response
"Science is guesswork." *779:21	→ "Science is not guesswork." *779:23	"...certainly scientists guess" and they even publish their educated guesses... *1404:18-25 (Expert Biologist J. Faber)
"There is a difference between theories and proven laws." *783:10	→ "Students have an incorrect understanding of 'theory.'" *783:10	"...there is a difference between facts and hypothesis... *1404:5-17 (Expert Biologist J. Faber) NOTE: J. Faber was confused by B. Schutte's complaint.
"...it's fun to hear the different opinions about evolution." *780:15	→ "There aren't different opinions about evolution." *780:18	"Yes, certainly there is debate about how...evolution... occurs." *1405:3-4 (Expert Biologist J. Faber)
"...I enjoyed studying evolution." HROC p. 6	→ "...goes beyond indicators..." *786:17	If 8th grade teachers are not supposed to be teaching evolution, why is E. Button known as the "teacher who teaches evolution"? *1296:1-7 Except for the year she didn't have time to teach it. *4050:5-9 Evolution is an 8th grade indicator.
"...I don't believe evolution." HROC p. 6	→ "Belief implies you don't need evidence." *785:1	Student doesn't need to believe what the teacher tells them, just understand the science. *785:7 Students did understand and did well on the OAT. *777:20
"...enjoyed debating evolution and creationism." HROC p. 6	→ "Debate elevates creationism to true science" *788:1	"...debate ought to be encouraged in the classroom, to bring different views to the table..." *3889:4-11 (Expert F. Laursen)
"...memorize periodic table" *781:10	→ "Not an indicator..." 780:22 "It gives a bad taste for chemistry" *781:13	The periodic Table is in the 8th grade textbook. No Board Policy prohibits teaching higher indicators. 4465:1 SEE BOARD POLICY 5408 "Memorizing [the periodic table] helped me a lot" *2660:7
"...learned about how life starts." *781:22	→ "My guess is...these are just my interpretations...so I'm guessing..." *782:1-3 "Not an indicator..." *782:4	"Science is not guesswork" (B. Schutte) *779:23 SEE BOARD POLICY 5408
"...dates are not always accurate." *783:18	→ "[Students] seemed uncomfortable with the idea that we can say the earth is around 4.3 and 4.5 billion years." *783:22-24 NOTE: That B. Schutte's dates are 200,000,000 years apart.	"...Earth is about 4.6 billion years old, estimated." *1400:11 (Expert Biologist J. Faber) NOTE: That this figure is 300,000,000 years away from B. Schutte's estimate.
"...the book is not always right." *787:1-4 & *788:16	→ "I was concerned as to what items this child was referring to." *787:1-4	"Just because it's in the textbook doesn't mean that it's correct information." (Teacher Lori Miller) *2429:16-25
"...chemical reactions were fun." *788:5	→ "Not an indicator..." 788:8	"Middle School teachers were encouraged to be teaching MORE chemistry" (*813:13), but since 2003, it is NOT an indicator. No Board Policy prohibits teaching higher indicators. SEE BOARD POLICY 5408

* Denotes Hearing Transcript

Bonnie Schutte's Misinterpretation of Questionnaires: Part 2

These surveys were the only evidence Bonnie Schutte was able to produce regarding the allegation that John Freshwater was teaching Creationism.

*1315:16-19

These student survey responses
IDENTIFY THE 8TH GRADE SCIENCE TEACHER AS JOHN FRESHWATER.

*789.6

She admits that "These are just my interpretations" of student responses.

*782:2

Student Survey 8th Grade Science	→ B. Schutte's Interpretation	Hearing Witness Response
"...I enjoyed Mr. Freshwater *789:9-10	→ "I think [that] is lovely." *789:8	"I love science, Mr. Freshwater." *1707:10
"Discussion time was helpful because we could get feedback." *790:2-5	→ "There was a discussion about creationism." *790:7-8	NOTHING in the response even suggests creationism. B. Schutte is guessing wrongly.
"...enjoyed studying geological dating." *791:1-2	→ "Not an indicator..." *791:4	No Board Policy prohibits teaching higher indicators. SEE BOARD POLICY 5408
"...difference between facts and hypothesis was helpful."	→ "A hypothesis is factual." 791:19	John Freshwater's definition of hypothesis is "an educated guess" (Employee Exhibit 4) J. Faber (Expert Biologist) concedes that this is an accurate statement. 1401:1-19

Board Policy 5408 Academic Acceleration:

"In accordance with the belief that all children are entitled to an education commensurate with their particular needs, students who can exceed the grade-level indicators and benchmarks set forth in the standards must be offered the opportunity and be encouraged to do so."

* Denotes Hearing Transcript

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater discussed any aspect of alternatives, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹¹⁵ speak about religion in a neutral manner,¹¹⁶ debate,¹¹⁷ be objective in presenting various sides of issues,¹¹⁸ acknowledge and explain religious holidays,¹¹⁹ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹²⁰

An allegation from an uncorroborated witness is unsubstantiated.

e. Response to: “Here”

John Freshwater’s well-articulated response is detailed in *John Freshwater’s Closing Statement Brief* beginning on Page 130.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of the word, “here”, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹²¹ speak about religion in a neutral manner,¹²² debate,¹²³ be objective in presenting various sides of issues,¹²⁴ acknowledge and

¹¹⁵ Employee Exhibit 81

¹¹⁶ Employee Exhibit 9

¹¹⁷ Employee Exhibit 84

¹¹⁸ Employee Exhibit 84

¹¹⁹ Employee Exhibit 168

¹²⁰ Employee Exhibit 169

¹²¹ Employee Exhibit 81

¹²² Employee Exhibit 9

¹²³ Employee Exhibit 84

¹²⁴ Employee Exhibit 84

explain religious holidays,¹²⁵ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹²⁶

This specification is unsubstantiated.

f. Response to: Expelled

John Freshwater's well-articulated response is detailed in *John Freshwater's Closing Statement Brief* beginning on Page 121.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. John Freshwater made use of the extra credit assignment pursuant to the exact language on the standard on Page 216, of the Academic Content Standards.¹²⁷ Furthermore, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹²⁸ speak about religion in a neutral manner,¹²⁹ debate,¹³⁰ be objective in presenting various sides of issues,¹³¹ acknowledge and explain religious holidays,¹³² and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹³³

This specification is unsubstantiated.

¹²⁵ Employee Exhibit 168

¹²⁶ Employee Exhibit 169

¹²⁷ Board Exhibit 37

¹²⁸ Employee Exhibit 81

¹²⁹ Employee Exhibit 9

¹³⁰ Employee Exhibit 84

¹³¹ Employee Exhibit 84

¹³² Employee Exhibit 168

¹³³ Employee Exhibit 169

g. Response to: Lesson Plan April 4, 2006

The worksheet “Darwin's Theory of Evolution – The Premise and Problem” (page 36) was used in conjunction with the lesson for April 4, 2006. In 2006, a concern had been raised about the worksheet, so Assistant Principal Tim Keib was commissioned by Superintendent Jeff Maley to investigate. Assistant Principal Keib was prepared to instruct John Freshwater that it was inappropriate to teach the content of the material, but when he actually asked Mr.

Freshwater for the context and purpose, Principal Keib found out

“that the material itself was not being taught, but it was being reflected upon as two different pieces of information looking at origin”.¹³⁴

Principal Keib was satisfied that the handout had not been used inappropriately, but actually had a goal related to ACS of teaching student to follow the scientific method.¹³⁵

Dr. Princehouse's opinions about the lesson plan or the worksheets are irrelevant since she did not at all consider the purpose and context; neither did she consider that the lesson plan had been approved by Administration in 2006 after increased scrutiny.

Moreover the matter was adjudicated by Superintendent Maley's letter of June 8, 2006, and there is no evidence the worksheet was used again.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of the worksheet after June 8, 2006 with a source for the material, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial

¹³⁴ Transcript Page 3627 – 3628 and 3629

¹³⁵ Transcript Page 3627:22 - 3628:5 and 3629:2-5

issues,¹³⁶ speak about religion in a neutral manner,¹³⁷ debate,¹³⁸ be objective in presenting various sides of issues,¹³⁹ acknowledge and explain religious holidays,¹⁴⁰ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁴¹

This accusation is without merit and unsubstantiated.

h. Response to: Other Materials

Many of these “other materials” were addressed in Freshwater brief, pages 115-121. The matter of the “Legos,” in which the BOE counsel seems to take great delight, was addressed by eyewitness Dr. Johnston, the host of the radio interview in which they were mentioned.¹⁴² Dr. Johnston testified that he, like BOE counsel, was under the mistaken impression that *John Freshwater* was the one who “had dumped the LEGOs out on the table.” In the course of the interview, however, he “learned it was a student-initiated criticism of macroevolutionary theory”.¹⁴³ This distinction was also evident in the audio recording of that interview played in the hearing (Board Exhibit 89) which conclusively demonstrated John Freshwater stated a student had used the Lego demonstration: not John Freshwater.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of toy Lego’s,

¹³⁶ Employee Exhibit 81

¹³⁷ Employee Exhibit 9

¹³⁸ Employee Exhibit 84

¹³⁹ Employee Exhibit 84

¹⁴⁰ Employee Exhibit 168

¹⁴¹ Employee Exhibit 169

¹⁴² Transcript Page 5416

¹⁴³ Transcript Page 5416 and Board Exhibit 89

Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹⁴⁴ speak about religion in a neutral manner,¹⁴⁵ debate,¹⁴⁶ be objective in presenting various sides of issues,¹⁴⁷ acknowledge and explain religious holidays,¹⁴⁸ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁴⁹

Misrepresentations of this event and interview are invalid.

2. Response to Impermissibly Brought Religion into His Classroom

a. Homosexuality and Sin

John Freshwater's well-articulated response is detailed in *John Freshwater's Closing Statement Brief* beginning on Page 128.

To begin, take note of an erroneous assertion on Page 37, that Zach Dennis corroborates Jim Stockdale's testimony. This is manifestly absurd – neither Zach Dennis or Observer Stockdale claims that they were both eyewitnesses of the same “event”. The fact of the matter is that *neither* witness is corroborated.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater had made comment upon homosexuality or sin, most particularly BOE Policy 3218 provides ample authority to examine

¹⁴⁴ Employee Exhibit 81

¹⁴⁵ Employee Exhibit 9

¹⁴⁶ Employee Exhibit 84

¹⁴⁷ Employee Exhibit 84

¹⁴⁸ Employee Exhibit 168

¹⁴⁹ Employee Exhibit 169

controversial issues,¹⁵⁰ and “...while having a right to their opinion on the subject, shall state it as such and they should be objective in presenting various sides of issues.¹⁵¹ Additionally, a Mount Vernon City School District teacher may debate,¹⁵² be objective in presenting various sides of issues,¹⁵³ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁵⁴

An allegation from an uncorroborated witness is unsubstantiated.

b. Easter and Good Friday

John Freshwater’s well-articulated response is detailed in *John Freshwater’s Closing Statement Brief* beginning on Page 125.

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater spoke about Easter or Good Friday, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹⁵⁵ speak about religion in a neutral manner,¹⁵⁶ debate,¹⁵⁷ be objective in presenting various sides of issues,¹⁵⁸ acknowledge and explain religious holidays,¹⁵⁹ and teach about religion, including the Bible or other scripture:

¹⁵⁰ Employee Exhibit 81
¹⁵¹ Employee Exhibit 84
¹⁵² Employee Exhibit 84
¹⁵³ Employee Exhibit 84
¹⁵⁴ Employee Exhibit 169
¹⁵⁵ Employee Exhibit 81
¹⁵⁶ Employee Exhibit 9
¹⁵⁷ Employee Exhibit 84
¹⁵⁸ Employee Exhibit 84
¹⁵⁹ Employee Exhibit 168

the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁶⁰

This specification is unsubstantiated.

c. Anabolic Outlaw

BOE counsel's topic sentence of the Anabolic Outlaw paragraph is inaccurate, and the rest of the paragraph follows suit. There is nothing in testimony that indicates Dennis Bates came to speak in a science class. John Freshwater did not acknowledge he had copies of Anabolic Outlaw "laying around" his classroom. Student Tokala Redman did not testify she received a copy of the book as a student in John Freshwater's class. John Freshwater was not even asked if he contested that he provided the book to Student Redman. John Freshwater did not assert anything about the religious nature of the book. This paragraph is not a challenge to John Freshwater's credibility, it is an assault on what Attorney Millstone believes is the audience's gullibility and it is an assault on Attorney Millstone's own integrity.

A careful, contextual reading of the relevant testimony¹⁶¹ clearly shows a different picture. We know that Mr. Bates spoke at an FCA meeting on November 13, 2007, according to speaker request forms, Jordan Freshwater's testimony and Teacher Orsborn's testimony.¹⁶² John Freshwater says Mr. Bates also spoke "during a class period" and, in proper context, describes the advisory activity period in which teachers were to discuss issues such as the dangers of drug and alcohol abuse. Because of the "advisory period", John Freshwater had many different "drug-related books", but he did not specify that he had Anabolic Outlaw.

¹⁶⁰ Employee Exhibit 169

¹⁶¹ Transcript Pages 5860, 5887-5889, and 5122-5123

¹⁶² Transcript Page 1719 and 6013

During the hearing Student Redman was asked a series of questions about FCA: did she attend; how often; why did she quit going; where were the FCA meetings held; was John Freshwater present at every FCA meeting; where did JF stand during FCA meetings. The very next question was “if Mr. Freshwater ever passed out Bibles or anything like that”. In context, Student Redman's response would be referring to FCA meetings. She says John Freshwater did not pass out Bibles. “The only book I ever remember getting [at FCA] was this one about anabolic steroids...”¹⁶³ Student Redman was speaking about receiving the book at an FCA meeting, and she does not explicitly say that John Freshwater was the one who gave it to her. “Mr. Freshwater was telling us about it.” What she remembers from John Freshwater's class discussion is “how this guy...ruined his life using it [steroids]”. Id. Student Redman did not mention any religious content in the discussion. There is ambiguity in the pronoun “he”: in the same paragraph, Student Redman speaks of both “this guy...” and Mr. Freshwater. Who is the “he” who “gave some away to people”? It would not be unusual for a speaker to bring copies of a book that he authored, and to give them away to the audience. Student Redman was not asked to clarify, and John Freshwater was not asked if he provided the book to her. Attorney Millstone did a poor job of clarifying Student Redman's responses if he wanted to try to prove what is asserted in the BOE's brief as Student Redman's testimony cannot be distorted as purported.

The author writes that on transcript Page 5888, John Freshwater “asserts the book is not religious in nature”. But this is not what the transcript says. On Page 5889, John Freshwater is asked if his “goal in having Mr. Bates come in” was “to promote anything religious”. John

¹⁶³ Transcript Page 5123

Freshwater responded that “it [his goal, or perhaps the “coming in”] wasn't religious”. John Freshwater was not asked about his opinion of the nature of the book.

Looking at the evidence in context, there is no indication that a religious message was communicated, either in an activity period or even at a meeting of the Fellowship of *Christian* Athletes. There is no clear indication that John Freshwater was the source of the book which Student Redman acquired.

The author's section on Anabolic Outlaw has stretched the truth so far that it has snapped; it suggests the author “may be unable to understand that it is impermissible” to apply a witness response to a question that was not even asked. “This presents a frightening glimpse into what else” the author may have presented as truth to the Board, “without any understanding of the detriment associated with his violating” a commitment to truth and integrity.

However, conclusive to this issue are the actual BOE Policies and Ohio Revised Code §3313.601¹⁶⁴ which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of the book, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹⁶⁵ speak about religion in a neutral manner,¹⁶⁶ debate,¹⁶⁷ be objective in presenting various sides of issues,¹⁶⁸ acknowledge and explain religious holidays,¹⁶⁹ and teach about religion, including the

¹⁶⁴ Employee Exhibit 80

¹⁶⁵ Employee Exhibit 81

¹⁶⁶ Employee Exhibit 9

¹⁶⁷ Employee Exhibit 84

¹⁶⁸ Employee Exhibit 84

¹⁶⁹ Employee Exhibit 168

Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁷⁰

This specification is unsubstantiated.

d. Material from Ministry Websites

The author names three “ministries” on Page 38: *Answers in Genesis, All About God* (2006 Souhrada complaint), and *kids 4 truth (The Watchmaker)*. Because the author failed to substantiate the claims related to any of these materials or sites, this claim is irrelevant.

Absent a damning context, conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater made use of the websites, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹⁷¹ speak about religion in a neutral manner,¹⁷² debate,¹⁷³ be objective in presenting various sides of issues,¹⁷⁴ acknowledge and explain religious holidays,¹⁷⁵ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁷⁶

This specification is unsubstantiated.

e. Will Graham

John Freshwater did not promote the Will Graham Celebration in his classroom. The FCA students had posted on their designated bulletin board a small poster with the dates; a photo

¹⁷⁰ Employee Exhibit 169

¹⁷¹ Employee Exhibit 81

¹⁷² Employee Exhibit 9

¹⁷³ Employee Exhibit 84

¹⁷⁴ Employee Exhibit 84

¹⁷⁵ Employee Exhibit 168

¹⁷⁶ Employee Exhibit 169

of the room taken by Principal White shows that the poster is with the FCA material on the board (Board Exhibit 25 and Transcript Page 508) and John Freshwater says that he is not the one who hung up the poster.¹⁷⁷ Student Tokala Redman did not even notice the poster, and student Riley Swanson says John Freshwater did not call attention to it.¹⁷⁸ Pens with the Celebration logo may have been present in the room, but were not passed out to students for their use.¹⁷⁹

Interventionist Beach says that John Freshwater talked about the Celebration AFTERWARDS with students who had attended,¹⁸⁰ but that would not necessarily have been during class time, but during John Freshwater's daily greeting time at the door. Even at that time, John Freshwater did not speak of the event as a Christian event or that it involved religion.¹⁸¹

Principal Bill White did not have any problems with any of John Freshwater's actions related to the Will Graham Conference and had no reason to notify John Freshwater of any violations concerning it.¹⁸²

Conclusive to this issue are the actual BOE Policies which provide permission and latitude for any alleged use by John Freshwater. *IF*, John Freshwater referenced the Will Graham event, Employee Exhibit 70, Chapter 6, and BOE Policies 2240, 2270, 3218, 8800 and 8800B, provide ample authority to examine controversial issues,¹⁸³ speak about religion in a neutral manner,¹⁸⁴ debate,¹⁸⁵ be objective in presenting various sides of issues,¹⁸⁶ acknowledge

¹⁷⁷ Transcript Page 4714

¹⁷⁸ Transcript Page 2224 and 5146

¹⁷⁹ Transcript Page 4714

¹⁸⁰ Transcript Page 970

¹⁸¹ Transcript Page 995

¹⁸² Transcript Page 697

¹⁸³ Employee Exhibit 81

¹⁸⁴ Employee Exhibit 9

¹⁸⁵ Employee Exhibit 84

¹⁸⁶ Employee Exhibit 84

and explain religious holidays,¹⁸⁷ and teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States.¹⁸⁸

There is absolutely no evidence that John Freshwater attempted to use this event to proselytize any students, in the class or outside of class.

This charge is without merit, and unsubstantiated.

f. Extensive Religious Display

As pointed out in *John Freshwater's Closing Statement Brief* beginning on Page 150, any discussion regarding a "religious display" has been rendered *irrelevant* by the *prompt, respectful obedience* of John Freshwater in removing all the items that he was directed to, with the exception of the Bible on his desk which Teacher Freshwater appealed based upon a constitutional right and because fifteen (15) other school employees also had a Bible in their personal workspace. (See Diagram, "Religious" & "Philosophical" Items Identified previously inserted between Pages 25-26, *supra*)

In this section of the BOE counsel's brief (Page 40), attempts to characterize the free expression of John Freshwater, that had gone unchallenged by Administration for years or even decades, as violative of law. In fact, it is the *Administration* that is violating the law and Board Policies 2270 and 8800 in demanding the removal of items just because they refer to Judeo-Christian views.

¹⁸⁷ Employee Exhibit 168

¹⁸⁸ Employee Exhibit 169

John Freshwater notes again that the BOE Policies are excellent, and should be understood and followed. It is the *abandonment* of the Policies by the Administrators that has produced this entire conflict.

In the most recent case in the United States Court system, a federal district court considered and decided the following about “religious” displays,

“May a school district censor a high school teacher’s expression because it refers to Judeo-Christian views while allowing other teachers to express views on a number of controversial subjects, including religion and anti-religion? On undisputed evidence, this Court holds that it may not.”
Johnson v Poway, United States District Court, Southern District of California, Case No. 3:07 cv 783 (2010)

There are striking similarities between the John Freshwater matter, and *Johnson v. Poway*, which states,

“It is undisputed that Johnson did not hang the banners as part of the curriculum he teaches, nor did he use the banners during any classroom sessions or periods of instruction. Rather, Johnson hung his banners pursuant to a long-standing Poway Unified School District policy, practice, and custom of permitting teachers to display personal messages on their classroom walls. For at least the three decades Johnson has taught, Poway Unified School District has maintained a policy, practice, and custom of giving teachers discretion and control over the messages displayed on their assigned classroom walls. Teachers are permitted to display in their classrooms various messages and items that reflect the individual teacher’s personality, opinions, and values, as well as messages relating to matters of political, social, and religious concerns so long as these displays do not materially disrupt school work or cause substantial disorder or interference in the classroom. Because of this policy, practice, and custom, teachers have used their classroom walls as an expressive vehicle to convey non-curriculum related messages. Other teachers at the four high schools in the Poway Unified School District, including Westview High School, display in their classrooms non-educational and non-curricular messages...”

Without a doubt, the word *display* is key in this whole matter. “Display” appears in BOE Policy 2270¹⁸⁹, Board Exhibit 1, the amended resolution, and the April 14, 2008 letter from Principal White to John Freshwater. The precise meaning of the term *differs* in each usage, though it is not apparent that the Mount Vernon City School District administration recognizes this difference. The shift of meaning away from established BOE Policy is *equivocation*, and produces invalid reasoning and an unlawful result.

Displays: Board Policies

The first paragraph of BOE Policy 2270 states, in part, that,

“no...*displays* of a religious character will be permitted in the schools of this District in the conduct of any program or activity under the jurisdiction of the Board.”

In order to correctly interpret the noun, *displays*, we must examine its context.

The grand context of BOE Policy 2270 is found in its title, **Religion in the Curriculum**.

Thus, every statement in this policy refers to the *curriculum*, an abstract entity.

John Freshwater points out that the entire first paragraph of this policy is focused on *activity*. In order to remove a reader’s bias, read the first paragraph of BOE Policy 2270, excising the *display* phrase alone:

“Based on the First Amendment protection against the *establishment* of religion in the schools, no devotional *exercise* ... will be permitted in the schools of this District in the *conduct* of any program or *activity* under the jurisdiction of the Board. Instructional *activities* shall not be permitted to advance or inhibit any particular religion” (emphasis added).

This first paragraph speaks entirely of activities, and the principle is set forth in the last sentence, that “...*activities* shall not ... advance or inhibit any particular religion” because of the

¹⁸⁹ Employee Exhibit 9

First Amendment protections. The first sentence identifies which *activities* as being those “in the *conduct* of any program or *activity* under the jurisdiction of the Board.” Thus, we must understand the noun, *displays*, in context with its associated noun, *devotional exercises*, as an *activity* of some kind associated with the *curriculum*. A principal dictionary definition of the noun, *display*, is “1. The act of displaying, especially a public exhibition.” (American Heritage Dictionary, 2nd College Ed.) Examples of *displays of a religious character* would include Easter Pageants, solemn processions with venerated relics or icons, and other *active* public exhibitions that concentrate attention to a particular religion in a devotional manner. This term is fairly broad in its usage, but it *must be an activity* and *cannot linguistically refer to inanimate concrete objects* because such an understanding cannot fit the context. An attempt to interpret *displays* as simply inanimate objects would be *the only concrete concept* in the entire paragraph, and does not fit the context.

Paragraphs three and five of BOE Policy 2270 actually refer to concrete, inanimate objects, but they are in the *context of curriculum*: “materials” that “frequently contain religious references.” The policy emphatically states that the religious nature of the physical objects is **irrelevant**, while again exhorting the teacher to refrain from “advance[ing] or inhibit[ing] any particular religion” or proselytizing.

The meaning of *displays* in BOE Policy 2270 is *activities*, not inanimate concrete objects.

BOE Policy 8800 refers to inanimate religious objects in only the second paragraph:
“District staff members shall not use ... *religious symbols* as a devotional exercise or in an act of worship or celebration.”

Similar to BOE Policy 2270, there is an injunction against *devotion, worship, or celebration* when handling *religious symbols*. Otherwise, there is no restriction.

Neither Administrative Guide 8800B, nor any other Policy or Guide says anything about “religious” objects in classrooms.

Thus, John Freshwater observes that the authoritative documentation, BOE Policy, says *absolutely nothing* about inanimate objects in a classroom, irrespective of having a religious character.

John Freshwater observes that BOE Policy 2270 is consistent with the opinion in *Johnson v. Poway*. The *Johnson v. Poway* Court correctly identified that,

“The Classroom Walls of Poway’s Westview High School Constitute a Limited Public Forum for Faculty Speech.”

Mount Vernon Middle School similarly has “a long-standing ... policy, practice, and custom of permitting teachers to display personal messages” in their classrooms, and is therefore a limited public forum for faculty speech. (See Diagram, “Religious” & “Philosophical” Items Identified previously inserted between Pages 25-26, *supra*) Thus, the court ruled that prohibitions of *some* teachers’ inanimate objects *because of their religious content*, while permitting *others* “would demonstrate hostility, not neutrality, toward religion,” and therefore violate the Establishment Clause. BOE Policies 2270, 8800, and 8800B are clear, constitutionally legal, and reasonable.

John Freshwater perceives tremendous confusion has resulted when the policy is twisted to attempt to describe a collection of inanimate objects. There is also tremendous peril, because it substitutes *subjective opinion* in place of *objective law*.

John Freshwater reminds the Referee and BOE Members of the confusion shown by the Mount Vernon City School District’s administrators described in *John Freshwater’s Closing Statement Brief* beginning on Page 150-165. The week before Teacher Andrew Thompson’s April 2, 2009 testimony in the hearing, Teacher Lori Miller was asked to remove her Bible, but

Teacher Thompson had not been asked to remove his¹⁹⁰ and Teacher Wes Elifritz still had a Bible and a few other “religious” items in his room.¹⁹¹ Teacher Elifritz confirms, as of day of his testimony, that Teacher Lori Miller was asked “three days ago” to remove her Bible, but he had not yet been asked.¹⁹²

After Teacher Lori Miller's first appearance at the hearing, Principal White instructed Teacher Miller to remove all devotional items from sight. Teacher Miller questioned if the policy had changed since the beginning of the year, because, at the beginning of the year, Superintendent Short said Teacher Miller could have her Bible on her desk, and then it changed.¹⁹³

Teacher Miller sought clarification as did John Freshwater. Teacher Miller received clarification from Principal White that Teacher Miller could keep her personal Bible on her classroom desk. On April 11, 2008, John Freshwater received the same clarification from Principal White. Principal White's in-person discussion with John Freshwater on April 16, 2008, that Teacher Freshwater's Bible had to leave the classroom was based upon hearsay communicated from Superintendent Short for which Teacher Freshwater sought clarification by speaking at the town square. On April 18, 2008, then BOE President Ian Watson confirmed John Freshwater had not been insubordinate by that date. During the remainder of April 2008 and through May and until the last day of school in June 2008, John Freshwater was not told to remove his personal, green Bible. Not until June 20, 2008, the date the report from HR on Call, Inc. was made public to the Columbus Dispatch, did John Freshwater learn he was considered

¹⁹⁰ Transcript Page 2873

¹⁹¹ Transcript Page 2873

¹⁹² Transcript Page 2825

¹⁹³ Transcript Page 3937

insubordinate for seeking clarification for a lawful and equally fair application of BOE Policy 2270. The Diagram titled, “Timeline of Dennis Family Complaints and The Administration’s Inaction” details the lack of any response to John Freshwater’s request for clarification. What is now known is that Superintendent Short was later rebuked by the BOE his failure to communicate whereby the BOE stated in Superintendent Short’s evaluation, “communication and follow-up skills need improvement”. (Employee Exhibit 234, Evaluation of Steve Short, dated August 7, 2009).

At the very least, inconsistent application of policy is tyrannical. Former Superintendent Maley stated that if there are other teachers with Bibles on their desks, once one teacher is asked to remove his, “they all need to be removed”.¹⁹⁴

According to Principal Keib, allowing one teacher to keep a Bible on their desk “sets a precedent” and it would be very difficult for an administrator to justify why one is allowed to do something and another is not allowed.¹⁹⁵

John Freshwater’s positions are in full agreement with the court ruling in *Johnson v. Poway*.

Displayed: April 7, 2008 Letter from Principal White

The truth is Principal White did not write the April 7, 2008, letter to John Freshwater. Principal White admitted that Attorney Millstone actually wrote the letter dated April 7, 2008, to John Freshwater, and Principal White simply signed the letter.¹⁹⁶ Perhaps Attorney Millstone’s advocacy in this matter has been a veiled attempt to justify his erroneous analysis demonstrated

¹⁹⁴ Transcript Page 2326

¹⁹⁵ Transcript Page 3637

¹⁹⁶ Transcript Page 239

Timeline of Dennis Family Complaints and The Administration's Inaction

DENNIS FAMILY COMPLAINTS

SEPT 11, 2007
Concern expressed regarding
FCA Speaker

DEC 7, 2007
Tesla Coil complaint
to S. Short

JAN, 2008
Contact BOE
Goetzman & Watson

JAN, 2008
FCA permission
slip complaint

FEB, 2008
complaint J. Freshwater
"leading" prayer
at FCA

MAR, 2008
Z. Dennis calls
to ask permission
to attend FCA
without permission
slip

MAR, 2008
Complaints about JF:
Easter;
"Healing Session";
Religious items;
"Bible"

APR 14, 2008
Letter from Dennis'
attorney

APR 18, 2008
Complaint about "Expelled"

APR 21, 2008
2nd Letter from
Dennis'
attorney

APR 29, 2008
Interview with HR on Call

JUN, 2008
Dennis' make public
appeal by filing
federal lawsuit
against BOE & JF

AUG, 2008
Complaint regarding
communication
style of
S. Dapprich,
Z. Dennis'
Soccer Coach
* 2144-2148

ADMINISTRATION

SEPT 11, 2007
S.Short & B. White turn away FCA
scheduled speaker D. Daubenmire

OCT, 2007
FCA permission slip directive

Dec 10, 2007
S. Short speaks with B. White;
B. White to investigate;
B. White meets w/ J. Freshwater.

JAN 22, 2008
Tesla Coil letter
confirming 12-10-07
conversation.
"Don't use again."

APR 7, 2008
Letter to J. Freshwater
regarding "religious"
items in classroom.

APR 14, 2008
Attempted "Clarification" letter to J. Freshwater
regarding "religious" items in classroom.

APR 16, 2008
JF to remove his Bible
from classroom.

APR 22, 2008
BOE orders HR on Call investigation
and monitor J. Freshwater's room

JUN 20, 2008
HR on Call report
released to Columbus
Dispatch

Aug 7, 2009
BOE evaluation
of Supt. S. Short notes,
"Communication and
follow-up skills need
improvement."



Dec 10, 2007
J. Freshwater shown
unidentified photo
of unidentified student with
unidentified mark in an
unidentified shape
and asked did you do this?

JAN 22, 2008
JF receives Tesla Coil letter
confirming 12-10-07
conversation

MAR 11, 2008
JF seeks clarity
on permission slips,
this time from BOE

JF again seeks
clarity on
permission slips

APR 14, 2008
JF complies

APR 16, 2008
JF makes public
appeal to retain his
Bible on his desk.

APR 11, 2008
JF seeks clarity on
"religious" items

May 25, 2008
JF prepares affidavits
for second interview
with HROC

MAY 15, 2008
JF interviews
with HR on Call

May 28, 2008
Second interview
cancelled by HR on Call

J. FRESHWATER

Timeline of J. Freshwater's Concerns and The Administration's Inaction

in his writing of “Principal White’s” April 7, 2008, letter which was only signed by Principal White.

John Freshwater directs the reader’s focus next to the second paragraph of “Principal White’s” April 7, 2008, letter. “Principal White” frames the paragraph with these phrases:

“With regard to *religious materials* in your classroom ... you may not ... keep *religious materials* **displayed** in the classroom.”

From this context, it is evident that “Principal White” is using a different definition of the word *display* from that used in BOE Policy 2270. Here, “Principal White’s” adverb evidently means a passive “visible,” clearly distinct from the relevant policy where it is a noun, meaning “an act of displaying or exhibiting.” “Principal White” is not resting on the authority of the BOE Policy, but upon his own interpretation as the Middle School Principal, whereby “Principal White” **impermissibly extends the BOE Policy that bars *active* exhibition to prohibit the *visibility* of certain *passive* inanimate objects.**

But this is not the only point in “Principal White’s” letter upon which he uses his own authority rather than BOE Policy. “Principal White’s” statement,

“While you certainly may read your bible (sic) on your own, duty free time (i.e. during lunch), it cannot be sitting out on your desk when students are in the classroom and when you are supposed to be engaged in your responsibilities as a teacher,”

sounds quite like an interpolation of *Roberts v. Madigan*, a distinguishable decision (due to vastly different circumstances). Mount Vernon City School District BOE Policy does not prohibit a teacher from keeping a Bible on his desk. BOE’s counsel reliance upon *Roberts v. Madigan* is inappropriate herein because the teacher in *Roberts v. Madigan* actually opened his Bible and read during a time when students were in his class also reading. BOE’s counsel’s

assertion that *Roberts v. Madigan* is dispositive herein is totally off base due to the distinguishing facts from that case.

“Principal White’s” next directive to John Freshwater is that,

“the 10 commandments ... part of your collage must be taken down and replaced with something that is not religious in nature,” (emphasis added).

This is perhaps an allusion to BOE Policy 2270, paragraph three. Although taken out of context, as already discussed, the phrase in the Policy actually means the *opposite* of what “Principal White” is trying to do. Policy 2270, paragraph three, declares of *curriculum materials*, “that such materials may be *religious in nature* shall not, by itself, bar their use in the District.” Regardless, allusion, misquoting, and abusing the context of a BOE Policy does not invoke its authority, and “Principal White” is again making this directive on his own interpretation.

“Principal White’s” next statement is the only one actually supported by the BOE Policy, although he paraphrases the 2270 Policy’s “advance or inhibit” clause into “promotes or denigrates.” Principal White states,

“As a public school teacher, you cannot engage in any activity that promotes or denigrates a particular religion or religious beliefs while on board property, during any school activity or while you are ‘on duty’ as a teacher” (emphasis added).

“Principal White” is standing squarely on BOE Policy authority with this directive, and he is to be commended for this, although it would have been better to actually cite and quote BOE Policy 2270.

“Principal White’s” last statement in this paragraph is, again, completely without BOE Policy authority.

“Unless a particular discussion about religion or religious decorations or symbols is part of a Board approved curriculum, you may not engage in religious discussions with students while at school....”

The part of this directive restricting discussions is in direct violation of BOE Policy 3218, Academic Freedom of Teachers. A teacher may express his opinion as long as he “states it as such.” Imposing a limit on “religious discussions” to BOE approved curriculum is an absurd attempt to vitiate other existing BOE Policies – specifically BOE Policies 2240, 3218, 8800 and 8800B – and puts these other policies in direct contradiction to Policy 2270.

Of the five directives in the second paragraph of “Principal White’s” April 7, 2008 letter, only one of them rests on the authority of BOE Policy, and “Principal White” puts himself above the authority of the BOE Policy on the other four. “Principal White” **equivocates** on the meaning of the term *display*, deviating from BOE Policy 2270.

Display: Amended Resolution

John Freshwater was directed to remove or discontinue the *display* of all religious articles in his classroom, including all posters of a religious nature...” The Amended Resolution further **equivocates** on the meaning of the word *display*, shifting it to mean an even more passive *presence*. The only directive to which the Amended Resolution can refer is the letter written by the “REAL Principal White”, who wrote the April 14, 2008 letter, due to the broad scope of *all religious* articles. The April 14, 2008 letter doesn’t even employ the word, *display*, but states, in part, “...all religious items need to be removed from your classroom....” While Principal White’s conversation with John Freshwater on April 11, 2008, provided very specific understanding of the fairly *narrow* scope of “all religious items,” the verbal clarification was lost by the time the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* was authored. Regardless, the Resolution assigns the noun,

display, to the meaning of the April 14, 2008 directive, commanding John Freshwater to *remove* all religious items. Hence, the Resolution now uses the word *display* to mean simple, passive *presence*, without any regard to whether an item is *visible*, or is paraded around in an *active exhibition*.

Display: Conclusion

John Freshwater directs attention to the fact that BOE Policies are clear, legal, and reasonable regulations. In contrast, the sequence of specific administrator directives, as well as the misrepresentation in BOE counsel's brief pages 40-41, is *unclear, unlawful*, and *unreasonable*. (See Diagram – “Defining a Religious Display: Part 1 and Part 2”, between Pages 24-25, *supra*)

This specification is unsubstantiated.

In response to the identified specification of the charge listed in the BOE's resolution, as required and limited by R.C. 3319.16, balanced by the clear and convincing standard or any other, John Freshwater was not willfully nor persistently in violation of any identified reasonable regulation of the BOE; nor do any of his actions constitute other good and just cause based upon the requisite intent. Therefore, the specifications in section two (2) of the BOE's *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* must be deemed unsubstantiated.

C. Response to FCA Argument

John Freshwater's well articulated response is detailed in *John Freshwater's Closing Statement Brief* beginning on Page 134 through 150.

BOE counsel has illegally changed the accusation against John Freshwater by going outside the Amended Resolution. R.C.3319.16 states that the resolution must be the “full specification” of the grounds to be considered.

1. John Freshwater Initiated Activities within the FCA (A.)

John Freshwater notes again that BOE counsel has disregarded the explicit law in R.C.3319.16 and the amended resolution in that this charge is outside scope of the “complete specification” of the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*, and this charge is therefore irrelevant. In the spirit of cooperation, we address the accusation on its merits.

BOE counsel’s representations on Page 42 that John Freshwater “admitted” to things are incorrect according to testimony. John Freshwater acknowledged hearing Zach Dennis’ testimony, but did not agree as to the accuracy of the representations in the questions asked of him.¹⁹⁷

Moreover, these allegations are made by only one person, Zach Dennis, and there is no corroboration from other eyewitnesses or evidence.

In a reprehensible show of desperation, BOE counsel seized the opportunity to malign the familial relationship between John Freshwater and his daughter Jordan. The discussion is irrelevant. Hence, there is no merit to this accusation.

An allegation from an uncorroborated witness is unsubstantiated.

¹⁹⁷ Transcript Page 477

2. John Freshwater Improperly Contacted Guest Speakers for FCA (B.)

John Freshwater's well articulated response is detailed in *John Freshwater's Closing Statement Brief* beginning on Page 134 through 150.

BOE counsel's reprehensible maligning of John Freshwater's daughter, Jordan, continues in this section, and we've already identified it as fallacious. BOE counsel's further commingling of proper behavior (monitor, *facilitate*, and supervise) or *facilitating* the use of school equipment with allegations of improper behavior is a fallacious attempt to confuse the reader.

The paragraph on Page 43 about "Expelled" and "Golden Compass" are gross misrepresentations of testimony and BOE Policy 3218 Academic Freedom of Teachers. The BOE counsel attempts to prove this claim with three (of more than 25) speakers at FCA: Dennis Turner, Ricky Warren, and Father Hammond. As we have pointed out, it is important for John Freshwater as *facilitator* (help the FCA club interface with school procedures) to contact speakers to confirm logistics. BOE counsel's explanation of Dennis Turner on Page 44 is just plain confusing. John Freshwater points out that the occasion on which Teacher Freshwater contacted Reverend Turner was less than one week before he spoke at FCA. This was obviously not the initial contact to Reverend Turner, because those contacts needed to be done at least one week ahead of time, per Principal White's policy.¹⁹⁸ Reverend Turner agreed that a student may have made *initial* contact with him by phone or in church.¹⁹⁹

As for Father Hammond, his words are being abused to make "short work of these false assertions". This is another example of the BOE counsel's **question-begging epithet** fallacy. The other witnesses testify to what Father Hammond doesn't remember. Jordan Freshwater says

¹⁹⁸ Transcript Page 1041, 697

¹⁹⁹ Transcript Page 1038, 1040

she and Ben Nielson invited Father Hammond²⁰⁰ and Ben Nielson says he filled out the speaker request form, though he doesn't recall whether he or Jordan made the call to Father Hammond.²⁰¹ Teacher Marcia Orsborn also tried to call Father Hammond, but spoke with the secretary instead. *She left contact information for John Freshwater.*²⁰²

An uncorroborated allegation is unsubstantiated.

We would also point out that BOE counsel discounts the three eyewitnesses of the communications between Jordan Freshwater and Ricky Warren (Page 45), and instead relies on an "expert" who can only testify about what he found in a backup archive.²⁰³ The expert is unable to testify about who composed the email, nor who read the email.

As shown in the Freshwater brief, this charge is unsubstantiated.

3. Response to John Freshwater Prayed with FCA Students; Directed FCA Students to Lead Prayer; and Participated in a Group Prayer over Pastor Zirkle (C.)

John Freshwater's well-articulated response is detailed in *John Freshwater's Closing Statement Brief* beginning on Page 134 through 150.

Again, John Freshwater notes that BOE counsel has disregarded the explicit law in R.C.3319.16 and the amended resolution in that this charge is outside scope of the "complete specification" of the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*, and this charge is therefore irrelevant.

²⁰⁰ Transcript Page 1687

²⁰¹ Transcript Page 2664

²⁰² Transcript Page 6070, 6016

²⁰³ Transcript Page 5986

“Prayed with FCA Students,” and “Participated in a Group Prayer over Pastor Zirkle” are outside the scope of the Amended Resolution. Still, in the spirit of cooperation, we address the accusation on its merits.

Zach Dennis is the only “eyewitness” to make these allegations. BOE counsel attempts to strain at gnats in order to prove their case, but a sequence of “may have” from John Freshwater, former Principal Ritchey, and Aid Frady do not prove anything at all.

Moreover, no other witness can even place Zach Dennis in attendance at the alleged “healing session”, Ben Nielson, for example.²⁰⁴

Hence, there is no merit to this accusation. An allegation from an uncorroborated witness is unsubstantiated.

In response to the identified specification of the charge listed in the BOE’s resolution, as required and limited by R.C. 3319.16, balanced by the clear and convincing standard or any other, John Freshwater was not willfully nor persistently in violation of any identified reasonable regulation of the BOE; nor do any of his actions constitute other good and just cause based upon the requisite intent. Therefore, the specifications in section (3) three of the BOE’s *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* must be deemed unsubstantiated.

D. Response to Insubordination

John Freshwater’s well-articulated response is detailed in *John Freshwater’s Closing Statement Brief* on Pages 150 through 164.

²⁰⁴ Transcript Page 2656

The word “Insubordinat[ion]” never appeared in any writing to John Freshwater except when he received the *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater*. Teacher Lori Miller received both a letter from Superintendent Short²⁰⁵ cautioning her about “insubordination” and an in-person caveat about “insubordination” during an audio-recorded meeting.²⁰⁶

Representations by the Board’s counsel are incongruent with the facts and evidence. Alleged clear communication by Principal White is belied by his own actions and notations noted by the duo Herlevi’s from HR on Call, Inc. (*John Freshwater’s Closing Statement Brief* Pages 152-153 and Employee Exhibit 48). The pattern of Principal White’s unclear communication was repeated with Teacher Lori Miller one year to the date after the same unclear communication was made to John Freshwater on April 14, 2008. (See Diagram “What is Lori Miller to conclude about her personal Bible?” after Page 156 in *John Freshwater’s Closing Statement Brief*.) Demonstrating his own confusion on the matter, Board President Ian Watson stated during the hearing that a “Bible on the desk is bad policy.”²⁰⁷

But most egregious is the BOE counsel’s assertion throughout pages 48 through 57 that John Freshwater was insubordinate from as early as April 7, 2008. This assertion is a prevarication of revisionist history, since none other than the highest authority in the Mount Vernon City School System at the time, Board President Ian Watson, declared on April 18, 2008 that *John Freshwater was not yet insubordinate*. (Employee Exhibit 147 and Transcript 5493-5496).

²⁰⁵ Board Exhibit 66

²⁰⁶ Transcript Page 2468 and Employee Exhibit 232 and 233

²⁰⁷ Transcript Page 5522

John Freshwater pointed out in *John Freshwater's Closing Statement Brief* Page 161 through 163, that Administrator Deb Strouse had been present in John Freshwater's classes since April 23, 2008 – three weeks before May 15, 2008. During that interval, fifteen (15) class days, and seventy-five (75) class periods, although Administrator Strouse reported the contents of the room to her superior, Principal White, she said *absolutely nothing* about them to John Freshwater because it wasn't "her job".²⁰⁸ Neither did the Administrators physically remove the allegedly offending materials, even though it was their obligated duty to address and remove any perceived illegal materials according to BOE Policies 0132 and 1230, and within their power, as High School Principal Kathy Kasler did.²⁰⁹ At no time during this uncertainty did the Mount Vernon City School District Administrators advise John Freshwater of the availability of the grievance process specified in the Master Contract (as they did with Teacher Lori Miller²¹⁰), in a dereliction of their duty according to BOE Policy 1230, which requires,

*"The Superintendent **shall be directly responsible** to the Board of Education for the performance of the following duties and responsibilities:
A. **ensure** that all aspects of District operation comply with State laws and regulations as well as Board **contracts**²¹¹ and policies". (emphasis added)*

Instead of making corrective efforts, the Administrators, Principal White and Superintendent Steve Short, **suborned insubordination** in gross dereliction of duty and abuse of power.

The charge of Insubordination is unsubstantiated.

²⁰⁸ Transcript Page 1852

²⁰⁹ Transcript Page 738 and 2140

²¹⁰ Transcript Page 2427

²¹¹ It is an errant assertion to claim a teacher, especially one like John Freshwater who was not a member of the voting union, had any responsibility to ensure the grievance process was followed. In sharp contrast, Superintendent Short demonstrated his correct application of authority by ensuring Teacher Lori Miller was advised of the relevant grievance process when he did advise Teacher Miller of the availability of the grievance process.

In response to the identified specification of the charge listed in the BOE's resolution, as required and limited by R.C. 3319.16, balanced by the clear and convincing standard or any other, John Freshwater was not willfully nor persistently in violation of any identified reasonable regulation of the BOE; nor do any of his actions constitute other good and just cause based upon the requisite intent. Therefore, the specifications in section (4) of the BOE's *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* must be deemed **unsubstantiated**.

CONCLUSION

The sum of the decision calculus in this matter has now demonstrated that John Freshwater prevails in this matter because:

1. Any and all matters related to John Freshwater's use of a Tesla Coil were adjudicated by Principal William White's letter to John Freshwater dated January 22, 2008.
2. The Academic Content Standards were not applicable in the Mount Vernon City School District until the beginning of the 2004-2005 school year.
 - A. John Freshwater taught his 8th grade students exactly as he was required as evidenced by the only known assessment tool authorized in the State of Ohio; the Ohio Achievement Tests. John Freshwater's students received proper instruction resulting in him being the only 8th grade teacher whose students achieved a proficient rating of seventy-seven (77%) percent on the Ohio Achievement Tests despite his classes containing the most special education students.
 - B. Ten (10) eyewitness students, two (2) teachers and one (1) principal testified John Freshwater never instructed on the topics of creationism nor intelligent design.
3. John Freshwater complied with all of the known parameters as he facilitated, monitored and supervised the Fellowship of Christian Athletes (FCA).
 - A. Witness testimony from credible sources clearly demonstrates John Freshwater did not conduct nor lead any prayers during FCA meetings.
 - B. Witness testimony from credible sources clearly demonstrates John Freshwater never asked non-familial students to lead prayer in FCA meetings.
 - C. Witness testimony from credible sources clearly demonstrates John Freshwater did not exceed his role as facilitator, monitor and supervisor of the FCA.

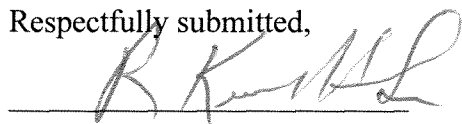
4. John Freshwater exercised a constitutional right to have a personal Bible in his classroom on his desk.
 - A. John Freshwater removed all items he was lawfully asked to remove.
 - B. John Freshwater did not receive any instruction from Principal William White or anybody else to remove the patriotic poster, which was distributed through the Mount Vernon Middle School office, depicting former President George Bush and Colin Powell.
 - C. John Freshwater never intended or tried to “make a point” by bringing additional religious articles into his classroom.

John Freshwater has a right to have the allegations made against him be proven by the BOE to the standard of proof which requires clear and convincing evidence. The BOE has failed to establish any of the specifications against John Freshwater by clear and convincing evidence.

John Freshwater prays this Referee, after consideration of the evidence presented, and assessment of the testimony heard, will find the (BOE) has failed to prove the charges set forth in the resolution to consider his termination originally dated June 20, 2008, but amended on July 7, 2008, and that the basis of the BOE’s investigation was deficient. (See Diagram – “Who did a thorough and complete investigation?”)

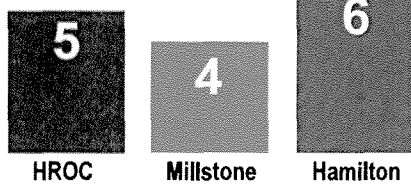
In response to each of the identified specifications of the charges listed in the BOE’s resolution, as required and limited by R.C. 3319.16, balanced by the clear and convincing standard or any other, John Freshwater was not willfully nor persistently in violation of any identified reasonable regulation of the BOE; nor do any of his actions constitute other good and just cause based upon the requisite intent. Therefore, all specifications in the BOE’s *Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater* must be deemed **unsubstantiated**.

Respectfully submitted,



R. Kelly Hamilton (Supreme Court No. 0066403)

Who did the thorough and complete investigation?



Administrators Interviewed



Eyewitnesses to Telsa Coil Experiment



Audio Recorded Interviews

Q. How did you capture everything that people said?

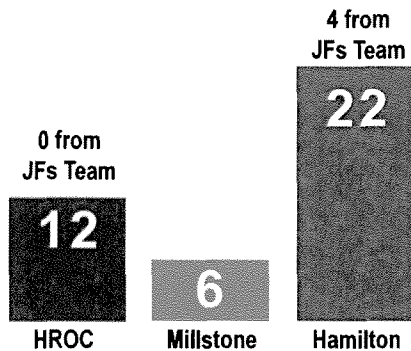
A. A piece of paper and a pencil and wrote it down.

Q. Do you make use of audio or video recordings in any of the work that you do?

A. I do it the old fashioned way.

A. I don't use audio recordings.

Thomas Herlevi 1071-1073



Teachers Interviewed



Number of Times Board Policy Referenced



JF's Direct Supervisors up to 2007 Interviewed



Past Board Members Interviewed



Comprehensive Written Statements (Affidavits)



Testimony from Expert Witnesses



Students Interviewed



Pastor/FCA Speakers Interviewed

Q. Interviewed everybody you needed to interview?

A. Yes.

Q. Don't believe that you failed to interview anybody?

A. I believe that we put together a factual objective report and that we interviewed everybody we needed to interview to put that report together.

Thomas Herlevi 1086-1087

Who WAS NOT interviewed by HROC?


Students from ZD's 8th Period Class (Eyewitnesses to Tesla Coil Experiment); Pastor Zirkle (the pastor whom ZD inferred JF held a "healing session" over); A. Thompson, B. Spitzer, who spent significant time in JF's classroom over many years, JF's direct supervisors up to 2007 (McDaniel, Keib, Kuntz, Vandenberg) who wrote his evaluations and personally observed him in his classroom over nearly 20 years; JF's 5 other Team Member Teachers were not interviewed by HROC or called as witnesses by BOE (who worked more closely with him on a day to day basis than any other staff – shared students, lesson plans, integrated instruction, etc. on a daily basis).

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Phone 614-875-4174

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing John Freshwater's Closing Statement Brief
was delivered this August 20, 2010 by counsel to:

David Millstone
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

A handwritten signature in dark ink, appearing to read "R. Kelly Hamilton", is written over a horizontal line.

R. Kelly Hamilton, (0066403)

1. Page 3 of the *Post-Hearing Brief for Mount Vernon City School District* cites "T. 363, 364 & 3330" where Attorney Millstone uses the word "burn", but in the Transcript as cited there is no mention of the word "burn".
2. Page 4, lines 19-20 of the *Post-Hearing Brief for Mount Vernon City School District* the author says, "Mr. White reported his conversation back to Mr. Short." They then cite "Short T. 58, White T. 495, 554-555". However, it is not stated in the Transcript that Principal White reported back to Superintendent Short.
3. Page 6 lines 2-4 of the *Post-Hearing Brief for Mount Vernon City School District* the author cites "Transcript 2645-2646" to contend that Student Ben Nielson said his mark was a "cross". However, the Transcript as cited at 2645 line 19 through 2646 line 2 indicates it could have been an "X" and that John Freshwater did not say "he was going to make a cross" on Student Ben Neilsen's arm.
19What did the mark on your arm look like?
20 A. It looked a lot like a cross, but as you can see in my
21 affidavit, the part where the cross crosses, it was a little
22 slanted.
23 Q. And did you also tell me it could have been an X?
24 A. It could have been an X.
25 Q. Did Mr. Freshwater say he was going to make a cross on
Page 2645
1 your arm?
2 A. No.

The assertion by the author of the *Post-Hearing Brief for the Mount Vernon City School District* that the mark was a "cross" is clearly not the intent of the witness when seen in context.

4. Page 6 of the *Post-Hearing Brief for Mount Vernon City School District* cites "T. 3866" purporting "held students' arm ", whereas the Transcript records, "set their arms down ".
5. Page 6, Line 8 of the *Post-Hearing Brief for Mount Vernon City School District* cites "T 376" for the proposition about "burn[ing]" students, whereas the Transcript record is about evolution and has nothing to do with a mark on students' arm.
6. Page 7, Line 4 of the *Post-Hearing Brief for Mount Vernon City School District* uses the word "zapped " and cites "T.335 & 3186" to emphasize, when the correct description should be "shocked" as stated in the Transcript.
7. Page 15 of the *Post-Hearing Brief for Mount Vernon City School District* the author mentions a "video" that they assert Student Maggie Wayne saw in John Freshwater's class and cites "T. 5177-78". However, this location in the Transcript is the testimony of Teacher's Aide Ruth Frady, not Student Maggie Wayne.

Misstatements of Transcript Citations in the *Post-Hearing Brief for Mount Vernon City School District*

8. Page 20 & 21 of the *Post-Hearing Brief for Mount Vernon City School District* cites "T. 379 & 403" where the author states John Freshwater "burned multiple students". There is no mention of "burned" in the Transcript.
9. Page 26, Lines 4-5 of the *Post-Hearing Brief for Mount Vernon City School District* cites "T. 5039-40" where the author states "Justin Newland was burned", but the Transcript says, "weren't sure whether it was a burn or a bruise".
10. Page 32, Lines 9-10 of the *Post-Hearing Brief for Mount Vernon City School District* asserts that "Taylor Strack recalled they talked about evolution and creation in Mr. Freshwater's class" and cites "T. 3363". However, T. 3363 is testimony by Jennifer Dennis, not by Student Taylor Strack, and has nothing to do with the topic the author is addressing.
11. Page 44, Lines 11-14 of the *Post-Hearing Brief for Mount Vernon City School District* contends that John Freshwater contacted Reverend Turner to speak at the FCA and cited "T. 1037". However the Transcript on page 1037 lines 10-23 actually shows that John Freshwater called to confirm that Reverend Turner was speaking and to work out the logistics.
12. Page 46 of the *Post-Hearing Brief for Mount Vernon City School District* the author said, "Mr. Freshwater admitted he prayed at FCA meetings" citing "T. 4401, 4492-94" to infer that he participated in group prayer. However; the context of John Freshwater's statements on pages 4492-4494 in the Transcript show that these "arrow prayers" or "Nehemiah prayers" are silent and that he did not participate or pray out loud at the FCA. He specifically said on lines 5-6 of T. 4494 said, "No, I do not pray out loud with the students when they are in FCA."
13. Page 55, Lines 7-9 of the *Post-Hearing Brief for Mount Vernon City School District* the author quotes John Freshwater as saying, "Mr. White definitely told me my personal Bible has to be out of the room. I took notes on it right after the meeting when I got back to my classroom." A footnote "19" is attached to this quote, however, it is not documented with Transcript location.

