

The following contains a sequence of correspondence between myself and Matt Foster regarding the debate:

Dr. Meert & Dr. Brown/Peggy:

I have written with some thoughts on the debate feud chronicled at Dr. Meert's site, and to an extent at Dr. Brown's site, *CreationScience.com*. (This email also keeps the promise I made Peggy that I would respond to Dr. Brown's position in submissions to both sides. Also, as a courtesy to Dr. Meert, I have attached the PDF file that Peggy sent me earlier today.)

As a lawyer who negotiates, writes, and litigates contracts for a living, I believe that neither Dr. Meert nor Dr. Brown has read the debate agreement exactly right. However, on the whole, Dr. Meert's reading seems much closer to correct (i.e., his misreading is minor), and Dr. Brown's reading -- particularly on the "modification" clause near the end -- seems (at best) hyper-technical and (at worst) materially and even deliberately wrong.

Dr. Brown argues that the "modification" clause applies only to "procedures," and that Dr. Meert's proposal does not deal with "procedures" -- meaning, in a nutshell, that Dr. Meert has not truly agreed to Dr. Brown's terms for debate. That, to use lawyer speak, is hogwash. While the modification clause does refer to "procedures," the term is not self-defining, nor is it defined in the agreement -- so what exactly the word means or includes must be determined in view of the entire document. When read as part of the agreement as a whole (and consistent with reported court decisions), "procedures" seems clearly to embrace all acts and powers of the editor listed in paragraph 8 -- including the power to "[m]ake whatever rulings will help accomplish paragraph 2 above." In other words, the editor has contractual authority to decide anything -- whether concerning submission lengths, formats, content, or anything else within the debate relationship -- if it makes the debate better or more helpful to its audience. If "procedures" does not include such items, then what exactly does the word mean? The agreement gives no clue. Against this backdrop -- and using common sense -- Dr. Meert's proposal seems easily to fall within the scope of "procedures" as the term is used in the modification clause.

On a related point, I disagree with Dr. Brown's claim that Dr. Meert has made inclusion of religion a mandatory condition of participation in the debate. To the contrary, Dr. Meert says at http://gondwanaresearch.com/hp/walt_brown.htm that he "will abide by the independent judges [sic] ruling (even if it goes against me) and will debate Walt in writing or in public at any time.")

More important, perhaps, is a different but related principle: Even if Dr. Brown's reading of "procedures" is correct, that does not free him from the separate obligation to proceed with selection of an editor under paragraph 5 -- after which Dr. Meert's proposed modification would be submitted to and decided by that editor. Stated differently, once Dr. Meert signed the contract (with or without a proposal attached), Dr. Brown had no choice but to proceed with selection of an editor -- which editor would then have sole power to decide whether Dr. Meert's proposal is proper or should be rejected. To be blunt, nothing in the agreement gives Dr. Brown any power either (a) to decide that Dr. Meert's proposal

does not concern "procedures," and therefore does not fall within the modification clause, or (b) then to do nothing based on that determination, and thus kill the debate before it begins. By refusing to act in any way on Dr. Meert's agreement, Dr. Brown is effectively serving as judge and jury, as well as advocate -- which, of course, makes the "debate" inherently unfair as well as impossible. If Dr. Brown will pounce on "procedures" to avoid appointment of the editor in this case, what word will provide his next exit?

I am not an evolutionist -- to the contrary, I am a Bible-believing, creationist Christian who has attended and enjoyed Dr. Brown's seminar, and who teaches a Bible class every week at my church. In addition, however, I am a Vanderbilt-educated, naturally skeptical lawyer who wants creation science claims to be backed up by evidence, is embarrassed by faulty logic and argument, and cringes whenever a creation science proponent appears to avoid instead of welcome direct engagement with an opponent. In this instance, Dr. Brown has disappointed me, because his misinterpretation and/or hyper-elevation of the term "procedures" looks like evasion. Of course, I might be entirely wrong, and I would welcome correction.

Many thanks for the opportunity to give my thoughts. Please use them however you wish.

Matthew Foster
McMains Foster & Morse, P.C.
9000 Guaranty Building
20 North Meridian Street
Indianapolis, Indiana 46204
Telephone (317) 638-7100
Telecopier (317) 638-7171

Following this e-mail, I asked Matt Foster if it was ok to put the letter on my website. He agreed. I also know that Matt had a telephone discussion with Walt Brown and received e-mail from a person in Minnesota regarding the above e-mail. At that point a letter was sent to a third party (I am reluctant to post a third party e-mail), Matt expressed some concern over how outsiders had misused this letter. Of course, people can misquote anyone and I have no control over that. In that 3rd party e-mail, I saw what appeared to be a personal attack (by Matt Foster) over how I read the Brown agreement. Matt then sent a followup letter to myself and Dr. Brown which stated:

-----Original Message-----

From: Matt Foster [mailto:foster@mcmainsofoster.com]

Sent: Thursday, October 09, 2003 7:12 PM

To: jmeert; Walt

Subject: FW: Brown/Meert Issue

Dear Doctors:

I wanted each of you to have a copy of the note I sent to George Anderson, who evidently sits on the Minnesota State Curriculum Committee, in response to a call and email I got from him. It seems that the Minnesota committee folk received some of my comments (as lifted from Dr. Meert's web site and forwarded as part of supporter's email), which then evidently fomented some vigorous discussions. (Boy, have I learned my lesson on sending email.)

As you read the note below, please keep in mind:

(1) I am open to correction re: Dr. Meert's apparent motives or perceived exploitation of a loophole. That is simply an opinion I drew, based on the tenor of some exchanges involving Dr. Meert, after my original email was sent.

(2) Though I still believe that the debate over language has problems, I have been gratified by Dr. Brown's attempts to engage me about possible improvements in that language. **Dr. Meert, to his own credit, has also been gracious with me, and took the step of specifically soliciting any additional thoughts I might have, a few weeks after the original e-mail.** Regrettably, unexpected work and family demands have greatly consumed my time, and thus prevented me from giving any attention to this issue, over the last four months.

(3) I am amazed and distressed at how my little email has apparently fueled discord. (Am I the only person who has no time to debate over the internet?) I regret now having sent it -- not so much because of its content, but because of how it has been used since, and the added phone and email traffic I have endured.

Regards to both of you.

MWF

I followed up (this e-mail and the 3rd party mail) with this:

-----Original Message-----

From: jmeert [mailto:jmeert@gondwanaresearch.com]

Sent: Thursday, October 09, 2003 8:32 PM

To: Matt Foster

Subject: RE: Brown/Meert Issue

Matt,

I also wanted to add that I cut and pasted your letter verbatim as it was sent to me. There were no changes, edits or doctoring of the original e-mail. Your tone below (**note: this is in the private e-mail to the individual from Minnesota**) suggests that I somehow misused your comments. I feel that is an unfair portrayal since I asked your permission to use those comments and posted them exactly as they were sent to me. I also feel it is important to point out that I am also a Christian and this creation-evolution debate, while interesting for other reasons, is not a matter of salvation.

Cheers

Joe Meert

Matt then sent the following reply to me:

-----Original Message-----

From: Matt Foster [mailto:foster@mcmainsofoster.com]

Sent: Friday, October 10, 2003 9:07 AM

To: jmeert

Subject: RE: Brown/Meert Issue

Joe:

No need to remove the posting -- I am not suggesting that we/you try to undo anything. I have just been surprised by the response. (You must get serious traffic at your site!) I wonder, really, where people get the time.

Also, I am sorry if my tone suggested that you are at fault for what has happened with my comments. I do not blame you at all, and affirm that you posted my note exactly as I sent it to you, which I greatly appreciate. It seems clear, though, that a few people who support your efforts or point of view have indeed used it only partially or selectively -- and, of course, what such folks do is beyond our control. I apologize if it seemed that I blame you, because no such implication was intended, and I consciously avoided any such explicit statement in my note.

I also agree that the evolution/creation debate is not a matter of salvation, and have been glad since your prior email to consider you a Christian brother. (One positive from this little ordeal, for me, will be renewed focus on different, more "matter of salvation" issues hence.)

Thanks again for your directness, fairness and graciousness in dealing with me.

Regards,

MWF

And my final reply to Matt:

Matt,

No problem, glad to clear the air on that issue. It's curious that so much money and time is spent on 'proving' that the earth is young and evolution did not happen. When I think of the lives that could be saved by applying all those funds to fighting hunger, it boggles the mind. I've spent time in east Africa and found that Islam is making big inroads simply by feeding the bodies and only when the bodies are full do they attempt to grab the souls. As Christian's this should be our goal. Anyway, I appreciate your candor in this matter and hope that the furor dies down a little.