

Chapter Thirty-two

Monday morning was overcast and oppressively humid. The air conditioner in the cab that took me to the courthouse in Brooklyn wasn't working well, and my shirt was wilted by the time we arrived. A number of journalists were waiting for me on the courthouse steps. Jessica was among them.

"Congressman, why did you take this case?" asked Charles Bancroft, a reporter from the *New York Times*.

"That's an excellent question," I said. "It deserves a solid answer. Why don't you all meet me here after this afternoon's session, and I'll give something you can print."

The reporters looked at each other in puzzlement, but I could see that they would all be there in the afternoon.

The gallery was loud and full. The trial was clearly generating some interest. I was hoping that the interest would increase as the trial progressed. The bailiff brought in the jury, and we were ready to go.

The judge reviewed some papers on the bench.

"Good morning, everyone," she said. "Mr. Taylor, please call your next witness."

"Your honor, the plaintiff rests," I said, "but we reserve the right to introduce evidence at a later time if necessary."

For a moment or two, there was only silence. It was as if the courtroom was frozen in time. Then a hushed buzz ran through the gallery. The jurors turned puzzled faces to the judge. Calabrese just sat with steepled fingers.

"What is the meaning of this, Mr. Taylor?" said the judge. "Doesn't the plaintiff intend to present a case?"

"Absolutely, your honor," I said. "The plaintiff has just presented its

entire case. We have proved that Mrs. Williams was dismissed for using the Bible as a historical resource. That has been firmly established. The defense has not disputed our contention. Therefore, we move for a directed verdict in our favor based on the principle of equipoise.”

“Explain yourself, Mr. Taylor,” said the judge.

“Your honor, according to the ruling of the Supreme Court in the case of *Schaffer v. Weast*, with Justice Sandra Day O’Connor writing for the majority, the general rule is that the burden of proof is on the party trying to change the status quo. If the evidence is in equipoise, meaning there is no clear indication to either side, the party calling for the maintenance of the status quo wins.”

The judge stared at me in amazement. “I’m familiar with *Schaffer v. Weast*, counselor. How are you applying it here? As the plaintiff, aren’t you the one seeking relief?”

“We are, indeed, your honor,” I said. “However, this case is not about whether or not Mrs. Williams was dismissed. That is not in dispute. It is whether the Bible is or is not an acceptable historical resource. That is the question before the jury. Regarding this question, which is the crux of the case, the status quo established for thousands of years in Western society is that the Bible is a reliable historical document. That status quo has never been officially changed in the New York City school system. Books published by certain members of the academic community do not represent a change in the status quo.

“Therefore, the burden of proof falls on the defendants. They must prove that the status quo should not be allowed to stand. And if the evidence is considered in equipoise, the jury must find for the plaintiff. The plaintiff has proved she was fired for using the Bible as a historical resource and that her civil rights were violated. She should not be required to prove anything beyond that. If defense does not demonstrate that they did not violate her civil rights, plaintiff automatically wins.”

Calabrese rose to his feet. “Your honor, this argument is unexpected.

The defense requests a brief recess to consider its merits.”

The judge frowned. “You’re not the only one taken by surprise, counselor. Court will adjourn until two o’clock, at which time I will rule on the motion by the plaintiff.”

At two o’clock, the judge returned to the courtroom. She looked around at the sea of expectant faces.

“Before I issue my ruling on plaintiff’s motion,” she began, “I want to explain the principle of equipoise to the jury and the context of the Supreme Court ruling.

“The case of *Schaffer v. Weast* involved individualized education programs (IEP) that schools are required by statute to provide for children with disabilities. The Maryland public school system designed an IEP for Brian Schaffer, a child with learning disabilities. Brian’s parents were unhappy with the IEP. They placed Brian in a private school, after which they initiated a due process administrative hearing challenging the IEP and seeking compensation for the cost of Brian’s private education. Who had the burden of persuasion? The Supreme Court ruled that they did.”

The judge spent fifteen minutes explaining the background of the case and the principle established by the Supreme Court. She was being exceedingly careful, because she knew this ruling might be grounds for appeal; the defendant could argue that she had put her hand on the scale. But if the principle of equipoise were applicable and she didn’t apply it, the plaintiff could appeal. It was a tough call.

“I’ve decided to allow the motion of the plaintiff,” she declared. “It is unreasonable to assume that an opinion that prevails in academic circles, but is not unanimous, constitutes a *de facto* change of the status quo. Since there is no official school policy specifically forbidding the use of the Bible as a historical resource, the plaintiff’s use of the Bible as an extracurricular resource would be justified unless the defendants can prove that the Bible is not a legitimate historical resource.

“The burden of proof, therefore, falls on the defendants. If the

defendants present no case, I would be compelled to issue a directed verdict in favor of the plaintiff. The plaintiff would not be required to prove that the Bible is a legitimate historical resource. If the defendants do present a case, I will inform the jury that the burden of proof is on the defendants.

“I am assuming that the defendants intend to present a case. Is that correct, Mr. Calabrese?”

Calabrese stood up. “Of course, your honor.”

“As I explained, the burden of proof is on the defense. Are you prepared to begin now?”

“Yes, we are.”

“Then let us proceed.”

I took a deep breath and let it out slowly. The equipoise ruling was a major step forward. It framed the trial properly in the minds of the jurors. It impressed on them that the true defendant in this trial was not the Board of Education. It was the Bible, and the burden of proof was on its detractors. This was not a legal trick. It was fair and just.

Calabrese called Dr. Charles I. Clayton. The battle was on.

Dr. Clayton had a ruddy face and a thick mane of white hair. He looked as if he would be most comfortable with a pipe in his mouth.

“Can we have your full name, Dr. Clayton?” said Calabrese.

“Charles Ingersoll Clayton.”

“And what kind of doctor are you?”

“I am a doctor of biblical studies. I have been the Lindstrom Professor of Biblical Studies at Northwestern University for the last five years.”

“Dr. Clayton, could you give us a little background about biblical studies? How old is your field?”

“Biblical scholarship is a textual science concerned with determining the Bible’s origin. Who wrote it? Why? When? How much in it, if anything, is historical? We’re interested in the message only insofar as it helps determine the identity of the authors and their motivation.”

“You mentioned that you try to determine the identity of the authors of

the Pentateuch. Not author, but authors. In the plural. Are you saying that there was more than one author?"

"Without a doubt. Biblical criticism has determined that there were at least four authors and that an editor formed the first five books of the Bible by combining the writings of these authors."

"How interesting. You say this is certain?"

"Oh yes. It's an established fact, one of the great accomplishments of Western science. It ranks right up there with Darwin's theory of evolution. No intelligent person would dispute it."

I could not allow this to pass. "Objection, your honor! This is offensive. Many millions of people would disagree with this witness, and I suspect that some of them might even be intelligent."

The judge nodded. "Objection sustained. Strike it from the record."

"Let me rephrase the question," said Calabrese. "Is there a general feeling in the academic and scientific community that multiple authorship of the Bible is so clear that no intelligent person would dispute it?"

I rose again. "Objection! Has the witness taken a poll?"

"I withdraw the question. Doctor Clayton, you say the field of biblical scholarship seeks to determine who wrote the Bible, why and when. Why is it so important to determine the identity of the author or authors?"

"In order to gain a full understanding of any work, it's important to know the identity of the author, when he wrote it, the social conditions, his personal life, his motivations and prejudices, all these give us a true picture of what he's saying and why he's saying it."

"Makes sense. I think that's beyond dispute. Why is it so clear to most biblical scholars that the Bible was not written by Moses?"

"The Bible claims to have been written about thirteen hundred years before the common era. But many indications in the text itself and modern discoveries of archaeology place the time of authorship at a much later date. Some of these clues point to a perfect fit for these texts with conditions in the Israelite kingdoms some six or seven hundred years later."

“How interesting.”

“Believe me, it’s fascinating. We call these anachronisms.”

“What are anachronisms?”

“Anachronisms are statements of information that do not fit the times in which the Bible was supposedly written. For instance, an alleged eyewitness account of Napoleon’s invasion of Russia in 1812 that describes Napoleon’s arrival by helicopter at the siege of Moscow is obviously not authentic. The Bible is full of anachronisms.”

“Could you share some anachronisms with the court and the jury?”

“Certainly. The most striking is the mention of camels in the time of the Patriarchs, which according to Biblical chronology was about 2000 B.C.E. The stories of the Patriarchs in Genesis are packed with camels, and yet we know that camels weren’t domesticated until about 1100 B.C.E. Just to mention one instance, how could Abraham have sent his servant to find a wife for Isaac with a caravan of camels almost a thousand years earlier? It’s like Napoleon flying in a helicopter. No, it’s more like Julius Caesar flying in a helicopter.”

“For the record, can you give us a source for this information?”

“I suggest *The Bible Unearthed* by Dr. Israel Finkelstein.”

“That is powerful evidence, Dr. Clayton. Are there any more anachronisms you can share with us?”

Clayton mention a few more, and then he came to the Philistines.

“The Book of Genesis reports that Isaac, the second Patriarch of the Israelites, had an encounter with Abimelech, the king of the Philistine city of Gerar,” said Clayton. “Abraham is also reported to have visited Gerar. As I mentioned, these encounters supposedly took place about 2000 B.C.E. The problem is that the Philistines didn’t arrive in the region until about 1100 B.C.E. There were Philistines in the writer’s time, so he assumes there were Philistines in the times of the Patriarchs. How was he to know that the Philistines didn’t arrive until nearly a thousand years later?”

Calabrese nodded. “It makes you think, doesn’t it? Can you give the

court specific citations about the Philistines in the Bible as well as some of the other anachronisms we discussed? You can give us chapter and verse.”

Clayton produced a sheet. “It’s all here,” he said. “Citation and source.”

“Permission to approach the witness,” said Calabrese.

“You may approach,” said the judge.

Calabrese took the sheet from Clayton and handed it to the judge.

“We have copies for the plaintiff and the jurors,” he said.

“The bailiff will distribute them. You may proceed.”

Calabrese returned to the lectern. For the better part of an hour, Clayton testified about anomalies in the biblical language and usage he considered indications of late authorship. Calabrese took him through his testimony meticulously, insisting on proper citations to support his testimony, both in the text and in critical sources.

“The evidence seems quite overwhelming, Dr. Clayton,” said Calabrese after taking the witness through his paces. “What conclusion do you draw?”

I generally avoid interrupting with objections, but I felt I should make a point to the jury. I did not expect my objection to be sustained.

“Objection, your honor,” I said. “I believe the jurors would like to draw their own conclusions from the witness’s testimony. They are intelligent people and perfectly capable of doing so on their own.”

“Your honor, Dr. Clayton is an expert witness,” said Calabrese. “That’s what expert witnesses do. They draw expert conclusions.”

“Indeed, they do,” said the judge. “Objection overruled. The witness will answer the question.”

“Thank you, your honor,” said Calabrese. “Dr. Clayton?”

“I draw the only reasonable conclusion possible —”

I got up again. “Objection! We’ve been through this before.”

“Yes, we have, counselor,” said the judge. “Objection sustained.

Witness will refrain from making such incendiary statements.”

“Dr. Clayton, your conclusions,” said Calabrese.

“My conclusions. In my opinion ... uh ... it is clear that the Bible was

not written at the time it claims to have been written. Therefore ... in my opinion ... it has no historical value. The stories of the Bible, especially the Pentateuch, the Five Books of Moses, are foundational myths and legends, concocted many centuries after the alleged events supposedly took place. They were meant to give the emerging Israelite nation a unifying history and a sense of antiquity and stability.”

“Thank you for your expert opinion, Dr. Clayton. Now, the discovery of anachronisms doesn’t solve the mystery of who wrote the Bible, does it?”

Clayton smiled. “The questions were rhetorical. Biblical scholarship in the last one hundred and fifty years has discovered that the Bible is a composite of source documents. We’ve developed a set of ironclad criteria, and we can point with assurance at just about any passage, verse or verse fragment and identify the source document from which it was taken. This is called the Documentary Hypothesis.”

“And this will help us discover who wrote the Bible and why?”

“It will. Since we have already established that it was not written at the time it claims to have been written but many years later, we can view the Bible in the context of the political situation in Israel at the approximate time of its composition, and we can see that the various source documents serve the political goals of the different parties.”

“Thank you for your testimony, Dr. Clayton.”

I stood up. “Your honor, counsel for the defense has covered a lot of ground with this witness regarding alleged anachronisms. I’d like to cross-examine the witness on his testimony and present rebuttal witnesses.”

The judge nodded. “Motion granted. But the hour is late. Court is adjourned until tomorrow morning.”

The press was waiting for me on the courthouse steps with television cameras and microphones. It was better than I had expected. They all started asking questions at the same time. I called on Jessica first.

“Can you tell us why you took this case, sir?” she asked. As she had promised, she did not address me as Congressman.

“As you all know, my beloved grandson was brutally murdered in Hesterville by members of the American Identity Party just a few months ago. His name was David Goldfield. He was twenty years old. Please remember that name and mention in your stories. As you also know, the FBI has cornered my grandson’s killers in Yellow Brook up in Padunkee County. There’s a siege going on there, but I’m confident the FBI will prevail and bring those bastards to justice.

“This trial is directly connected to Yellow Brook. They’re both part of the struggle to save our beloved America from the evil designs of the American Identity Party. They’re determined to start a race war and crush our democracy. They’re armed with heavy weapons and a boatload of hate. They must be stopped.

“The FBI is going after the criminals, but that alone won’t destroy the AIP. For each one they arrest and lock up, there may be two others to take their place. We have to strike at the ideological heart of the AIP movement. That’s what this trial is all about.

“The American Identity Party is anti-Jewish, anti-Christian and anti-Muslim. They claim that the moral fabric of our society is a sham. They claim that the values of Western society, which are rooted in the Bible, are a fool’s errand. They claim that the only meaningful values for human beings are might makes right and survival of the fittest. A society rooted in Judeo-Christian-Islamic values would not allow a race war. But if these values are the products of a grand hoax, all limits and restrictions are gone.

“I’ve taken this case because I want to prevent rivers of blood in our cities and towns. I want people to see that it’s more reasonable to believe that the basic story of the Bible is historical, that its moral code is divinely inspired, than it is to call it a hoax. They can decide for themselves if they believe in the miracles, but I want them to know that God created human being in His image, that we are not animals in the wild.

“Remember David Goldfield!”