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KITZMILLER, ET AL. V. DOVER AREA SCHOOL DISTRICT: THE INDEFINITE DEFEAT OF INTELLIGENT DESIGN

In October of 2004 the Dover, Pennsylvania, school board voted to incorporate ‘intelligent design’ (ID) into their biology curriculum, sparking a debate that would draw national interest and bring the question of whether the teaching of alternatives to evolution violates the US Constitution’s provision for separation of church and state before federal court. The board’s controversial motion, drawn up by a majority faction of Christian fundamentalist members, read: “Students will be made aware of gaps/problems in Darwin’s theory and of other theories of evolution including, but not limited to, intelligent design.”¹ Eleven parents in the school district took issue, and supported by the American Civil Liberties Union (ACLU), Americans for the Separation of Church and State, and the National Center for Science Education took their case to Pennsylvania’s Federal District Court in Harrisburg. Though issues surrounding the teaching of evolution and creationism have passed through US courts for almost a century, the Dover case set a new precedent in that the board (despite its overtly religious motivations) was arguing for the placement of intelligent design – the theory that “only intelligent causes adequately explain the complex, information-rich structures of biology and that these causes are empirically detectable” – within the realm of science.² Propo-

1 M. Powell, *Evolution Shares a Desk with Intelligent Design*, Washington Post, December 26, 2004, p. A01.

2 W.A. Dembski, *Intelligent Design*, http://www.designinference.com/documents/2003.08.Encyc_of_Relig.htm [accessed July 27, 2011].

nents of ID, represented by the Thomas More Law Center (which for years had searched the country's schools for a teacher willing to dispute evolution)³ and for a short time the leading voice for intelligent design theory, the Discovery Institute, argued that the addition of alternatives to evolution constituted the expansion of science, not its antithesis, while ID detractors argued it amounted to a cover for religion under the disingenuous disguise of hard science. The eventual ruling, meanwhile, carried the potential to affect not only the 2,800 students in the Dover school district, who would be the first in the nation to be taught intelligent design,⁴ but also open the door for other states to include forms of creationism in their biology curriculums.⁵ Perhaps even more significantly, the case would be the first to engage the questions of what demarcates science from religion and whether teaching 'scientific' forms of creationism is tantamount to the promotion of Christianity; hence deciding the constitutionality of including intelligent design in state school curriculums.

Despite separation of church and state being enshrined in the US Constitution under the First Amendment stipulation that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,"⁶ the presence of religion in American schools, specifically Christianity, was common until the early 1960s, when the Supreme Court banned state-sponsored school prayer. Similarly, the idea that evolution should be taught as the explanation for the origin of our species in a religion-free classroom is decidedly recent, as is the interpretation of the First Amendment as prohibiting religious instruction in public schools, though the roots of both can be traced back almost a century. The issue began its ascendance in US courts in 1925, when the State of Tennessee accused high school science teacher John Thomas Scopes of violating the Butler Act, which declared it illegal "to teach any theory that denies the story of divine creation as taught by the Bible and

3 L. Goodstein, *In Intelligent Design Case, a Cause in Search of a Lawsuit*, New York Times, November 4, 2005. p. A16.

4 M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court*, The New Yorker, December 5, 2005, http://newamerica.net/publications/articles/2005/darwin_in_the_dock [accessed July 26, 2011]

5 M. Powell, *Evolution Shares a Desk with Intelligent Design...*

6 *Bill of Rights*, http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html [accessed July 27, 2011].

to teach instead that man was descended from a lower order of animal.”⁷ The following courtroom drama, dubbed the ‘Monkey Trial’ by the American media, played out under intense national scrutiny in the Tennessee Supreme Court, where after an obligatory opening prayer the American Civil Liberties Union, represented by the legendary defense attorney Clarence Darrow, defended Scopes in a vain effort to challenge the ‘Monkey law.’ Despite the defense’s attempts to engage the matter of whether the Butler Act had any scientific basis by calling prominent scientists to testify, the presiding judge, Christian fundamentalist John Raulston, set aside the larger issues the trial potentially encompassed to focus on the mere fact of whether Scopes had broken Tennessee law, at one point ruling the testimony of a noted zoologist on the theory of evolution inadmissible. The end result was a \$100 fine for Scopes, rejoicing by the religious community, chagrin in the scientific community, and no appeal.⁸ Subsequent cases would take a similar approach to controversies over evolution and creationism in schools by eschewing difficult questions of a scientific nature in favor of legal principles.

It was forty-three years later that the US Supreme Court, in *Epperson v. Arkansas* (1968), firmly rejected the teaching of creationism – to decidedly less fanfare than the Scopes’ media circus. The case was nonetheless a direct descendant of the Monkey Trial, whereby high school biology teacher Susan Epperson, employed in the town of Little Rock, challenged a 1928 anti-evolution statute inspired by Tennessee’s ban on Darwinism. Without hearing any scientific testimony,⁹ the Supreme Court ruled that the state of Arkansas had wrongly outlawed the teaching of evolution because it had contradicted the religious belief that the origins of man are found exclusively in the Book of Genesis. Citing the unconstitutionality of the statute, the decision read: “There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.”¹⁰ In 1987 the Court reaffirmed its position on the First Amendment in *Edwards v. Aguillard*, when it struck

7 D. Linder, *The Scopes Trial: A Final Word*, July 10, 2000, <http://law2.umkc.edu/faculty/projects/trials/scopes/evolut.htm> [accessed July 25, 2011].

8 *Ibidem*.

9 M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

10 393 U.S. 97 *Susan Epperson et al., Appellants, v. Arkansas*. No. 7. Supreme Court of the United States. Argued October 16, 1968. Decided November 12, 1968,

down Louisiana's 'Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act' of 1981 (also known as the 'Creationism Act'), which sought to legalize the teaching of creationism under the auspices of academic freedom – Louisiana legislators arguing that “teaching all evidence” provided “a more comprehensive science curriculum.”¹¹ In a seven-to-two vote the Supreme Court found the act unconstitutional, ruling that it did not further academic freedom, but showed a “preference for the teaching of creation science and against the teaching of evolution” by forbidding “school boards to discriminate against anyone who ‘chooses to be a creation-scientist’ or to teach ‘creationism,’ but fail[ing] to protect those who choose to teach evolution or any other non-creation science theory, or who refuse to teach creation science.”¹² Finally, the court deemed obvious the motive undergirding the act, stating plainly that “the purpose of the Creationism Act was to restructure the science curriculum to conform with a particular religious viewpoint.”¹³ These two landmark cases, however, demonstrated a disinterest similar to that of the Scopes Trial in engaging the question of man's origins, and whether the creationist stance was in any way a practicable scientific method valuable to understating and explaining life on Earth. Instead, both favored a constitutional approach, hearing no scientific testimony whatsoever.¹⁴ The Dover school board and its use of the intelligent design moniker, however, attempted to circumvent these earlier rulings with its insistence on the scientific viability of ID, thus forcing the courtroom debate absent from previous decisions on teaching creationism in schools. The strategy lay in demonstrating that the concept could be defended objectively, or even proven, with no reference to any specific religion. Yet questions remained about whether those on the Dover school board were the ideal candidates to promote such a dispassionate vision.

Irrespective of the stress on the ostensibly scientific nature of intelligent design, it is not difficult to understand why some parents in the

<http://law2.umkc.edu/faculty/projects/ftirials/conlaw/Epperso.htm> [accessed July 27, 2011].

11 W.J. Brennan, *Edwards v. Aguillard*. 1987, <http://www.answers.com/topic/edwards-v-aguillard> [Accessed July 27, 2011].

12 *Ibidem*.

13 *Ibidem*.

14 M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

Dover school district took alarm at the board's actions in the fall of 2004. Though that area of Pennsylvania is known as a Republican stronghold of conservative Christian believers, the election of a school board determined to do away with Darwinism was actually an unexpected byproduct of a quarrel over spending. The incumbents produced bloated budgets, and were easily defeated by the conservative opposition. Though the teaching of evolution had not been an issue in the election, it was not long before William Buckingham, curriculum chairperson, began to criticize the school's biology textbooks as "laced with Darwinism,"¹⁵ at the same time insisting that: "This country wasn't founded on Muslim beliefs or evolution. This country was founded on Christianity and our students should be taught such."¹⁶ Buckingham was soon on record stating that "someone has to take a stand" for Jesus in thanks for his death on the cross, while fellow members of the board publicly posited that the Earth was created, along with man, somewhere around 10,000 years ago.¹⁷ In November the board announced that beginning in January 2005 a statement would be read out to ninth-grade biology students regarding the existence of different views on life's origins and Darwinism's status as a theory, not fact.¹⁸ Additionally, in place of the old biology textbook the board suggested the use of *Of Pandas and People* (1989), a controversial text that advocates intelligent design theory¹⁹ (sixty²⁰ new copies of which had been made available in the school library).²¹ Justifying the board's stance, member and Assemblies of God Pastor John Rowand argued: "If the Bible is right, God created us. If God did it, it's history and it's also science."²² These sentiments, or at least the project they inspired, were initially given a degree of credibility by the Seattle-based Discovery Institute, Center of Science and Culture, which promotes it-

15 M. Powell, *Evolution Shares a Desk with Intelligent Design...*

16 M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

17 M. Powell, *Evolution Shares a Desk with Intelligent Design...*

18 A. Worden, 'Two Groups Sue over 'Intelligent Design'', Philadelphia Inquirer, December 15, 2005, p. B05

19 A. Worden, *The Theory Defended as Science*, Philadelphia Inquirer, October 20, 2005, p. B02

20 A. Worden, *Board Member Denies Religious Motive*, Philadelphia Inquirer, October 28, 2005, p. A01

21 S. McCarthy, *Darwin v. Intelligent Design*, The Globe and Mail, September 28, 2005, p. A1.

22 M. Powell, *Evolution Shares a Desk with Intelligent Design...*

self as a scientific organization devoted to the theory of intelligent design. The institute claims to have removed their work from any religious text or doctrine, merely hypothesizing that “certain features of the universe and of living things are best explained by an intelligent cause, not an undirected process such as natural selection.”²³ However, the fact that the board’s defense was taken up by the Thomas More Law Center, whose stated goal is safeguarding “the religious freedom of Christians,”²⁴ raised further questions about the supposed non-religious character of the board’s intentions. It was therefore unsurprising that soon after the trial’s beginning, the Discovery Institute labeled the board’s policy’s “misguided” and too connected to old-school creationism, and withdrew its support for their challenge to evolution.²⁵ Many among Dover’s population nonetheless remained on the side of the school board. When Witold Walczak, head of the Pennsylvania chapter of the ACLU, held a press conference to announce they were bringing suit, a group of protesters stood behind him with banners reading: “the ACLU is a communist front,” and “the ACLU censors truth.”²⁶ Indeed, within Dover the issue was not whether Christianity was true, but whether or not it belonged in schools. Of the eleven plaintiffs who had children attending Dover, many of them professed the Christian faith and two taught Sunday school. Regardless, they believed that the teaching of ID had no place in a public classroom.²⁷

Tammy Kitzmiller, et al. v. Dover Area School District, et al. commenced on September 26, 2005, as a non jury trial.²⁸ Judge John E. Jones III presided, a Bush appointee best known for banning the sale of ‘Bad Frog Beer’ because its label featured an amphibian making an obscene hand gesture.²⁹ The case would hinge on determining if intelligent design constituted

23 Discovery Institute, *What is Intelligent Design?*, <http://www.intelligentdesign.org/whatisid.php> [accessed July 23, 2011].

24 M. Powell, *Evolution Shares a Desk with Intelligent Design...*

25 N. Banerjee, *School Board Sued on Mandate for Alternative to Evolution*, New York Times, December 15, 2004, p. A31.

26 *Ibidem*.

27 C. Rosen, *Inherit the Wind, Redux: How Evolution and Intelligent Design Clashed in a Pennsylvania Town*, Washington Post, February 25, 2007, p. T02.

28 A. Worden, *Theory Defended as Sound Science*, Philadelphia Inquirer, October 20, 2005, p. B02

29 A. Worden, *Bad Frog Beer to ‘Intelligent Design’*, Philadelphia Inquirer, October 16, 2005, p. B01

creationism revamped, or a valid science. Underlying the distinction was the vital question of whether the Dover school board's actions were religiously motivated and hence violated the Constitution.³⁰ The defense, led by Patrick Gillen, adopted the tactic of arguing that scientific debate still existed with regard to evolution, insisting that the board members had simply wanted to "encourage critical thinking," and that their "primary purpose" was not to advance religion.³¹ The Thomas More Center lawyers hoped to put credible scientists on the stand that could effectively argue that ID was a plausible scientific theory because some living organisms are so complex that the best explanation for their existence is a designer. Thus entirely disconnected from religion and any mention of God, intelligent design could evade the Constitution's First Amendment provision.³² This task fell to Michael Behe, biochemist at Pennsylvania's Lehigh University, member of the Discovery Institute, practicing Roman Catholic, and author of *Darwin's Black Box*, a bestselling book on intelligent design critical of evolution. As one of the ID movement's few legitimate scientists, he had also authored a chapter of the Dover school board's recommended textbook, *Of Pandas and People*,³³ and toured the United States promoting ID on university campuses.³⁴

Under examination, Behe resolutely maintained ID was "well-tested from an inductive argument," offering a "different framework" to help "differentiate between fact and theory."³⁵ "When you see a large number of parts interact in a purposeful arrangement," he explained, "we've found that to be design."³⁶ Pressed as to whether his view on ID was the result of religious beliefs, Behe replied, "No, it isn't. ... It is based entirely on observable, physical evidence from nature," citing the 'bacterial flagellum' as the "best and most striking example of design."³⁷ At trial, Behe

30 A. Worden, *Board Member Denies Religious Motive*, Philadelphia Inquirer, October 28, 2005, p. A01

31 L. Goodstein, *Closing Arguments Made in Trial on Intelligent Design*, New York Times, November 5, 2005, p. A14

32 L. Goodstein, *In Intelligent Design Case, a Cause in Search of a Lawsuit...*

33 A. Worden, *Theory Defended as Sound Science*, Philadelphia Inquirer, October 20, 2005, p. B02

34 L. Goodstein, *Expert Witness Sees Evidence in Nature for Intelligent Design*, New York Times, October 18, 2005, p. A16.

35 A. Worden, *Theory Defended as Sound Science...*

36 *Ibidem*.

37 L. Goodstein, *Expert Witness Sees Evidence in Nature for Intelligent Design...*

presented a picture of “the outboard motor bacteria use to swim,” positing it was clearly a “purposeful arrangement of parts.” He stopped short, however, of identifying the designer, explaining that as such origins cannot be determined through science, ID did not even “require knowledge of the designer.” Behe freely admitted that in his mind the designer was God, though the belief was not based in science. He was keen to stress, however, that regardless of his personal convictions schools should continue to teach evolution because “many aspects are well substantiated,” and intelligent design only challenged one part of Darwinism, natural selection, which he asserted could not account for the existence of DNA, immune systems, or blood clotting.³⁸ Yet as Behe’s three days of testimony wore on, during cross examination his arguments began to falter under the onslaught of plaintiff’s lead attorney, Eric Rothschild, who skirted absurdity with a barrage of unanswerable questions highlighting the speculative nature of ID’s final conclusions. He interrogated Behe on how the designer supposedly worked, whether he used a blueprint, and whether beings like the bacterial flagellum were created one by one or all at once, eventually forcing the biochemist to admit that a definition of sciences that included ID could also cover astrology.³⁹

With Behe effectively neutralized, Rothschild was free to concentrate on presenting the testimony of the ACLU’s own expert witnesses and establishing the religious motives of the Dover school board. On behalf of the plaintiffs, expert witness Brian Alters, professor of science education of McGill University in Montreal, argued that ID was in essence “detrimental” to Dover’s students not least because Darwinism is “the cornerstone of modern biology.”⁴⁰ Speaking frankly, he deemed the Dover school board’s decision to include ID “the worst thing I’ve ever heard of in science education,” adding that “Darwin’s theory is a theory and a fact in that scientists’ confidence in the theory is so high they no longer debate it.”⁴¹ Alters also managed to inject some dry wit into the proceedings. When asked by the defense: “Do you have any studies to show that intelligent design is detrimental?” he responded, “I have no studies to show any pseudo science

38 *Ibidem.*

39 M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

40 A. Worden, *Expert: Teaching Intelligent Design Impedes Learning*, Philadelphia Inquirer, October 13, 2005, p. B02

41 *Ibidem.*

is detrimental.”⁴² These thoughts were seconded by Robert T. Pennock, professor of science and philosophy at Michigan State University, who described intelligent design as religious in nature and untested as science: “Even if [proponents] don’t explicitly say ‘God’ . . . and simply ‘transcendent power,’ intelligent design is a religious concept.”⁴³ The expert testimony of the two witnesses was buttressed by that of Dover teachers and parents as to the damaging effect the board’s policies had wrought upon the school. Teacher Bertha Spahr testified to constant harassment from the school board about whether she taught that “man comes from a monkey,”⁴⁴ while Tammy Kitzmiller recalled how her daughter had dropped biology when the ID statement was made, and was subsequently subjected to disapproval in the community and school. Kitzmiller further characterized the board’s policy as a slight to science and affront to the concept of separation of church and state.⁴⁵ Most damaging, however, was Rothschild’s cross examination of curriculum chairperson William Buckingham concerning his original motivations in introducing intelligent design into ninth-grade biology. During a stretch of testimony riddled with contradictions and apparent lies, Buckingham maintained he had never used religious language at board meetings. When Rothschild showed a television broadcast of him using the word ‘creationism,’ Buckingham declared he had misspoken. Rothschild then noted that in an earlier deposition Buckingham stated that he did not know who bought the sixty copies of *Of Pandas and People* for the school library, then produced a cancelled check for the purchase in his name. Buckingham grudgingly admitted the money had come from his church,⁴⁶ as Rothschild replied in sarcastic shock: “That’s not what you said in your deposition.”⁴⁷ Buckingham’s credibility as an unprejudiced advocate of intelligent design was further compromised when a witness stated he had once declared “the separation of church and state is a myth” at a board meeting.⁴⁸

⁴² *Ibidem*.

⁴³ A. Worden, *Mother Testifies ‘Intelligent Design has Harmed Children’*, Philadelphia Inquirer, October 20, 2005, p. B02

⁴⁴ M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

⁴⁵ S. McCarthy, *Darwin v. Intelligent Design...*

⁴⁶ A. Worden, *Board Member Denies Religious Motive...*

⁴⁷ M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

⁴⁸ L. Anderson, K. Ridder, *Theory of ‘Intelligent Design’ Goes on Trial in Pennsylvania*, National Post, September 29, 2005, p. A19.

Among the trial's vitriol and recriminations a note of compromise was struck by expert witness for the plaintiffs, Brown University biologist Kenneth Miller, co-author of *Biology* – the textbook used at Dover that Buckingham had charged was “laced with Darwinism.”⁴⁹ Though a Roman Catholic who believes, like Behe, that God created the Universe in accordance with a divine plan, Miller expressed distinctly differing views on intelligent design's credentials as science. On the stand he testified that ID was unscientific for the simple reasons that it cannot be tested and ultimately formulates causes outside of nature *sans* the burden of evidence.⁵⁰ Miller articulated the elementary argument that “an intelligent designer who designed things, 99.9 per cent of which didn't last, certainly wouldn't be that intelligent,” while emphasizing that “if you don't have rules you don't have science. If you invoke a nonnatural cause – a spirit force or something like that – in your research and I decide to test it, I have no way to test it. I can't order it from a biological-supply house. I can't grow it in my laboratory.”⁵¹ Despite this dim view of ID, Miller insisted that the divide between religion and science within his own worldview did not amount to a contradiction, as his self-identification as a ‘Christian Darwinist’ would imply. Instead, he saw no reason why Darwinism would lead to the supposition of a Godless Universe if one believes “God is the author of all things, seen and unseen, and that would include the laws of physics and chemistry.”⁵² Nevertheless, his opposition to teaching such conclusions in public school under the umbrella of intelligent design remained unwavering.

In his closing argument, Rothschild stated his case plainly in a two-pronged attack. Firstly, he pronounced that the members on the Dover school board who had sponsored ID were lying when they said religion had nothing to do with the curriculum change, just as they clearly lied when they said they were unaware of who purchased *Of Pandas and of People* for the school library. Secondly, he challenged the fundamentals of ID, arguing “[i]ts essentially religious nature does not change whether it is called ‘creation science’ or ‘intelligent design’ or ‘sudden emergence

49 M. Powell, *Evolution Shares a Desk with Intelligent Design...*

50 S. McCarthy, *Darwin v. Intelligent Design...*

51 M. Talbot, *Darwin in the Dock: Intelligent Design has its Day in Court...*

52 S. McCarthy, *Does God Wear a Lab Coat?*, The Globe and Mail, October 1, 2005, p. F3.

theory.”⁵³ Were it science, he continued, there “would be two competing arguments based on evidence, research, and peer-reviewed articles – and intelligent design has none of those.”⁵⁴ These two themes would be echoed, often in a tone of withering derision, in Judge Jones’ final ruling.

Jones’ decision came on December 20, 2005, issued forty-eight days after closing arguments. The 139-page opinion offered a blistering critique of the Dover school board’s actions and the defense’s tactics,⁵⁵ finding that due to “overwhelming evidence” ID was religious in nature, standing as “a mere relabeling of creationism and not a scientific theory.”⁵⁶ As a result, the board had clearly infringed upon separation of church and state as delineated in the First Amendment when they ordered the biology curriculum to incorporate intelligent design. In addition, the judge concluded that the board had consistently lied to conceal their true motivations: “Our conclusion today is that it is unconstitutional to teach intelligent design as an alternative to evolution in a public school classroom,” wrote Jones, “...[t]he citizens of the Dover area were poorly served by the members of the board who voted for the ID policy. It is ironic that several of these individuals who so staunchly and proudly touted their religious convictions in public, would time and again lie to cover their tracks and disguise the real purpose behind the intelligent design policy.”⁵⁷ Using phrases such as “ill informed”⁵⁸ and “breathtaking inanity,”⁵⁹ Jones likewise criticized the board’s “striking ignorance concerning the concept of ID,”⁶⁰ proclaiming it obvious that they were attempting to inject “a particular version of Christianity” under the guise of “secular purposes.”⁶¹ Furthermore, Jones picked up on witness Kenneth Miller’s arguments, writing that

53 L. Goodstein, *Closing Arguments Made in Trial on Intelligent Design...*

54 *Ibidem*.

55 L. Anderson, *Win for Science in Evolution Row*, Hobart Mercury, December 22, 2005, p. 18

56 A. Worden, *Five Years Ago, ‘Intelligent Design’ Ruling in Dover Case Set a Legal Landmark*, Philadelphia Inquirer, December 20, 2010, p. A01.

57 J. Hurdle, *US Judge Bans Teaching of Alternative to Evolution*, The Irish Times, December 21, 2005, p. 13.

58 J. Grogan, *Finally, Someone with Intelligence*, Philadelphia Inquirer, December 23, 2005, p. B01.

59 J. Hurdle, *US Judge Bans Teaching of Alternative to Evolution...*

60 A. Anderson, *Win for Science in Evolution Row...*

61 S. Alberts, *US Judge Bars Teaching of Intelligent Design Theory*, The Gazette, December 21, 2005, p. A1.

evolution “in no way conflicts with, nor does deny, the existence of a divine creator.”⁶² Finally, Jones weighed in on the scientific validity of both Darwinism and ID, directly addressing the Discovery Institute’s Michael Behe: “To be sure, Darwin’s theory of evolution is imperfect. However, the fact that a scientific theory cannot yet render an explanation on every point should not be used as a pretext to thrust an untestable alternative hypothesis grounded in religion into the science classroom or misrepresent well-established scientific propositions.”⁶³ In sum, it was a smashing victory for the plaintiffs, capped with the order to remove any allusions to ID from the Dover school district’s biology classes. But for the eight members of the school board who had instituted the ID shift, defeat had actually come sooner. Before the trial even began each of them was unceremoniously voted out in local elections.⁶⁴ The defeat of the creationists left conservative televangelist Pat Robertson aghast, eliciting a lecture to the people of Dover on the dangers of provoking God’s wrath: “I’d like to say to the good citizens of Dover: If there is a disaster in your area, don’t turn to God; you just rejected him from your city.”⁶⁵ Providentially, a disaster has yet to occur.

Reaction to Jones’ opinion from evolution supporters was, as expected, enthusiastic. Rothschild dubbed the ruling “a real vindication for the parents who had the courage to stand up and say there was something wrong in their school district,”⁶⁶ while Miller summed up his feelings as: “Jubilation.”⁶⁷ Those who had fought for ID, however, followed Robertson’s fearless lead and unleashed a brutal verbal assault within the US media, attacking Jones for what they saw as a needlessly acerbic judgment – regarding both intelligent design and the Dover board – informed more by complacent ignorance than respect for science or religion. Richard Thomson of the Thomas More Legal Center labeled the ruling an “ad

⁶² J. Grogan, Finally, *Someone with Intelligence...*

⁶³ L. Goodstein, *Issuing Rebuke, Judge Rejects Teaching of Intelligent Design*, New York Times, December 21, 2005, p. A1.

⁶⁴ C. Rosen, *Inherit the Wind, Redux: How Evolution and Intelligent Design Clashed in a Pennsylvania Town...*

⁶⁵ A. Worden, K. Ridder, *Robertson Warns Town of God’s Wrath*, Philadelphia Inquirer, November 12, 2005, p. A20.

⁶⁶ *Intelligent Design Flunks US Court Test*, The Australian, December 22, 2005, p. 7.

⁶⁷ L. Goodstein, *Issuing Rebuke, Judge Rejects Teaching of Intelligent Design*, *New York Times*. December 21, 2005, p. A1

hominem attack on scientists who happen to believe in God,”⁶⁸ defiantly adding that: “A thousand opinions by a court that a particular scientific theory is invalid will not make that theory invalid.”⁶⁹ ID expert Behe meanwhile condemned the disdainful tenor of Jones’ opinion, as well as his apparent lack of scientific knowledge: “I think he really went way over what he as a judge is entitled to say. He talks about the ground rules of science. What has a judge to do with the ground rules of science? I think he just chose sides and echoed the arguments and just made assertions about our arguments.”⁷⁰ Licking his wounds, creationist warrior William Buckingham tried in vain to defend his tarnished image, calling the decision “ludicrous” and vigorously defending his moral and ethical probity: “if the judge called me a liar, then he’s a liar... I think the judge ought to be ashamed of himself.”⁷¹ The attack on Jones was continued by right-wing media pundits who felt that as a Bush appointee he had “stuck a knife in the backs of those who brought him to the dance in *Kizmiller v. Dover Area School District*.”⁷² Bush had already commented publicly on the controversy, stating simply: “Both sides should be taught.”⁷³ Understandably incensed, Jones balked at the implication that he should have set aside objectivity to “throw one for the home team.”⁷⁴ Predictably, the spectacle of the trial and its aftermath nauseated many, not least Darwin’s great-great-great grandson, one of the seventy-five reporters from around the world covering the events in the Harrisburg court. He expressed his dismay at the charged proceedings, noting that “Evolution is such a non-issue everywhere else in the world,” and declaring himself “appalled” at the lack of respect for the evidence his famous ancestor had painstakingly compiled.⁷⁵

Of all those who observed the happenings in Dover and had a stake in the trial’s outcome, it was perhaps the Discovery Institute who was left most bereft at the damage done to the reputation of the burgeoning intelligent de-

68 S. Alberts, *US Judge Bars Teaching of Intelligent Design Theory...*

69 L. Goodstein, *Issuing Rebuke, Judge Rejects Teaching of Intelligent Design...*

70 *Ibidem*.

71 *Ibidem*.

72 A. Worden, Judge in Dover Case Still Fighting., *Philadelphia Inquirer*, June 5, 2005, p. A01.

73 M. Gawenda, *Crusade for the Classroom...*

74 A. Worden, *Judge in Dover Case Still Fighting...*

75 A. Worden, K. Ridder, *A Chip Off the Old DNA*, *The Gazette*, October 31, 2005, p. A23

sign movement. Their anger was directed equally at the Dover school board, who they accused of dragging ID into a political debate, and Judge Jones, who they felt had done an egregious disservice to science. In the midst of the trial senior fellow John G. West complained: “The school district never consulted us and did the exact opposite of what we suggested. Frankly, I don’t even know if the school board members know what intelligent design is. They and their supporters are trying to hijack intelligent design for their own purposes. They think they’re sending signals in the culture wars.”⁷⁶ And despite receiving its major funding from Christian foundations and private philanthropists,⁷⁷ the Discovery Institute continued to distance itself from the religious motivations of the Dover school board in its later criticism of Jones, whose decision they claimed both “conflated Discovery Institute’s position with that of the Dover school board” and “misrepresent[ed] intelligent design and the motivations of the scientists who research it.”⁷⁸ Their final verdict on Jones’ decision was such: “an attempt by an activist federal judge to stop the spread of a scientific idea and even to prevent criticism of Darwinian evolution through government-imposed censorship rather than open debate.”⁷⁹ The Institute nonetheless articulated the hope that the “decision will be of minor significance,” and ID’s merits would ultimately be assessed in the scientific sphere rather than the courts.⁸⁰

Cogently outlining the implications of the judgment, John White Jr. of Emory University’s Center for the Study of Law and Religion in Atlanta opined: “*Kitzmiller* is likely to be regarded as the Scopes case of the 21st century – celebrated and lamented alike as the case that commanded not only the separation of church and state but also the alienation of religion and science.”⁸¹ Though *Kitzmiller* was certainly a setback for those pushing an alternative to evolution, the future of ID is still an unknown commodity. “Anyone who thinks a court ruling is going to kill off interest in intelligent design,” warned West in an interview, “is living in another world.”⁸² Regardless of whether he realized it at the time, his

⁷⁶ L. Goodstein, *In Intelligent Design Case, a Cause in Search of a Lawsuit...*

⁷⁷ P. Nussbaum, *Intelligent Design’s Big Ambitions*, *Philadelphia Inquirer*, October 10, 2005, p. A01.

⁷⁸ P. Grier, J. Burek, [in:] *The Christian Science Monitor*, December 21, 2005. p. 1

⁷⁹ *Ibidem*.

⁸⁰ L. Anderson, *Win for Science in Evolution Row...*

⁸¹ *Ibidem*.

⁸² *Ibidem*.

words sounded a prophetic note. One could be forgiven for expressing skepticism about the impact of Jones' ruling for the future of creationist alternatives in American schools. Indeed, it was not long before similar attempts to include challenges to Darwinism in state curriculums appeared. In 2007 the Pinellas school board in Florida voted to include "other theories on the origins of life" in the science curriculum, but – crucially – without reference to ID.⁸³ Soon after, in 2008, the Louisiana state legislature passed a bill that allowed schools to teach intelligent design alongside evolution, circumventing *Kitzmiller* with vague language and no mention of ID, justified once more by an appeal to "academic freedom."⁸⁴ In 2009 they went a step further, approving the use of textbooks critical of Darwinism published by the Discovery Institute. Since the 2005 *Kitzmiller* decision, Alabama, Michigan, Missouri and South Carolina have also attempted to slip "views about the scientific strengths and weaknesses of Darwinian theory" into high school science classrooms.⁸⁵ No public outcry, however, has occurred.⁸⁶ It appears that since *Kitzmiller* creationists have changed their tactics, arguing for a teaching of the supposed "scientific debate over Darwinian evolution," though those in the actual scientific community see no debate to be had.⁸⁷ Still, the *Kitzmiller* ruling has at least provided a boost to the teaching of evolution, giving teachers a clear mandate to discuss Darwin in a country where millions of evangelicals hold fast to their belief in creationism.⁸⁸ Whether or not they, with their compatriots in the intelligent design movement, manage to mount a challenge to *Kitzmiller* in the courts appears to be less an uncertainty than a matter of time.

⁸³ D. Winchester, R. Matus, *Origin Theories Clash in Pinellas*, St. Petersburg Times, December 18, 2007, p. 1A.

⁸⁴ J. Farrell, Creationism Still Alive and Kicking in US Public Schools, *New Scientist*, October 23, 2010; [accessed in *LexisNexis* August 3, 2011, <http://web.alfredstate.edu:2051/hottopics/lnacademic/>? [accessed in *LexisNexis* August 3, 2011].

⁸⁵ L. Biel, *Opponents Of Evolution Are Adopting New Strategy*, New York Times, June 4, 2008, p. A14.

⁸⁶ *Ibidem*.

⁸⁷ S. Newton, *Creationists Have Gotten Clever*, Christian Science Monitor, January 19, 2011, <http://web.alfredstate.edu:2051/hottopics/lnacademic/>? [accessed in *LexisNexis* August 3, 2011].

⁸⁸ A. Harmon, *A Teacher on the Front Line as Faith and Science Clash*, New York Times, August 24, 2008, p. A1.

STRESZCZENIE

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KITZMILLER, ET AL. V. DOVER:**TYMCZASOWY UPADEK TEORII INTELIGENTNEGO PROJEKTU**

Teoria inteligentnego projektu – twierdzenie głoszące, że formy biologiczne są tak złożone, iż jedynie „inteligenta przyczyna”, a nie ewolucja, jako siła sprawcza jest w stanie wyjaśnić początki życia na Ziemi – została wcielona do programu nauczania biologii w Dover, w Pensylwanii, dając początek ogólnokrajowej debacie, która doprowadziła do postawienia kwestii zgodności nauczania alternatyw do teorii ewolucji z przepisami Konstytucji Stanów Zjednoczonych, które dotyczą separacji państwa i wyznaniw przed sąd federalny. Wynikła stąd sprawa *Kitzmiller, et al. v. Dover Area School District* (2005), która stała się pierwszą w historii próbą przeprowadzenia dyskusji na temat wartości naukowej darwinizmu i kreacjonizmu podczas trwających kilka tygodni przesłuchań biegłych. Ostatecznie sędzia John E. Jones III stwierdził, że inteligentna przyczyna ma u podstaw podłoże religijne i nie stanowi teorii naukowej, która warta byłaby wprowadzenia do amerykańskich szkół. Choć był to cios dla członków ruchu ewangelickiego i inteligentnej przyczyny, od czasu orzeczenia w sprawie *Kitzmiller* kreacjoniści nie ustają w wysiłkach, aby zakwestionować darwinizm, posiłkują się nieprecyzyjnymi określeniami i odwołują do wolności nauczania, popierając wykładanie alternatywnych koncepcji w stosunku do teorii ewolucji w szkołach.