

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

TAMMY J. KITZMILLER, et al., :
Plaintiffs :
vs. : Case Number
: 4:04-CV-02688
:
DOVER AREA SCHOOL DISTRICT; :
DOVER AREA SCHOOL DISTRICT :
BOARD OF DIRECTORS, :
Defendants :

TRANSCRIPT OF PROCEEDINGS
OF OPENING STATEMENTS

Before: HONORABLE JOHN E. JONES, III

Date : September 26, 2005

Place : Courtroom Number 2, 9th Floor
Federal Building
228 Walnut Street
Harrisburg, Pennsylvania

COUNSEL PRESENT:

ERIC J. ROTHSCHILD, ESQ.
WITOLD J. WALCZAK, ESQ.
STEPHEN G. HARVEY, ESQ.
RICHARD B. KATSKEE, ESQ.

For - Plaintiffs

PATRICK T. GILLEN, ESQ.
RICHARD THOMPSON, ESQ.
ROBERT J. MUISE, EQ

For - Defendants

Lori A. Shuey, RPR, CRR
Official Court Reporter

1 THE COURT: Good morning to all. Counsel,
2 would you enter your appearances starting with counsel
3 for the plaintiffs.

4 MR. ROTHSCHILD: Good morning, Your Honor.
5 Eric Rothschild from Pepper Hamilton, L.L.P., for the
6 plaintiffs.

7 MR. HARVEY: Good morning, Your Honor.
8 Steve Harvey, Pepper Hamilton, for the plaintiffs.

9 MR. WALCZAK: Your Honor, Witold Walczak,
10 American Civil Liberties Union of Pennsylvania, for
11 the plaintiffs.

12 THE COURT: All right.

13 MR. GILLEN: Good morning, Your Honor.
14 Patrick Gillen from the Thomas More Law Center for the
15 defendants.

16 MR. THOMPSON: Good morning, Your Honor.
17 Richard Thompson of the Thomas More Law Center for the
18 defendants.

19 MR. MUISE: Good morning, Your Honor.
20 Robert Muise from the Thomas More Law Center for the
21 defendants.

22 THE COURT: And good morning to all of you.
23 Are you prepared to open?

24 MR. ROTHSCHILD: Yes, I am.

25 THE COURT: You may do so.

1 MR. ROTHSCILD: Good morning, Your Honor.
2 My co-counsel and I represent eleven parents who are
3 challenging the Dover Area School District's change to
4 its biology curriculum. That change to the biology
5 curriculum, which is displayed on your monitor and on
6 the screen, singles out the scientific theory of
7 evolution, among all the scientific concepts taught to
8 Dover High School students, as being suspect and
9 promotes the religious proposition of intelligent
10 design as a competing scientific theory.

11 Eighteen years ago, the United States
12 Supreme Court, in Edwards versus Aguillard, held that
13 public schools could not teach students creation
14 science because that proposition's core concept of a
15 supernatural creator is religious, not scientific, and
16 therefore violates the establishment clause of the
17 First Amendment to the United States Constitution.
18 The Court recognized that the teaching of creation
19 science was motivated by a religious and cultural
20 agenda, not the improvement of scientific education.

21 What we will prove at this trial is that the
22 Dover board policy has the same characteristics and
23 the same constitutional defects as the creation
24 science policy struck down in Edwards. You will hear
25 testimony from members of the Dover community, these

1 parents, teachers, administrators, and board members,
2 about how this change to the curriculum came to be.

3 Board members announced their interest in
4 the topic of evolution in starkly religious terms.
5 They looked for a book that could provide a religious
6 alternative to evolution, and they found one in Of
7 Pandas and People.

8 They changed the science curriculum to
9 advance a specific religious viewpoint, and in doing
10 so, they ignored accepted scientific knowledge, failed
11 to avail themselves of the advice of established
12 scientific organizations, and ignored their own
13 science teachers who opposed the change to the science
14 curriculum.

15 They did everything you would do if you
16 wanted to incorporate a religious topic in science
17 class and cared nothing about its scientific validity.
18 And we will show that the members of the school board
19 that passed this policy expressed their desire to
20 teach creationism over and over and over again.
21 That's their word, "creationism."

22 As Your Honor will recall, in January, you
23 permitted expedited discovery so these plaintiffs
24 could decide whether to move for a temporary
25 restraining order. We deposed Alan Bonsell and Sheila

1 Harkins, the last two board presidents, William
2 Buckingham, the head of the curriculum committee when
3 the curriculum change was approved, and Dr. Richard
4 Nilsen, the Dover Area School District's
5 superintendent.

6 All of them denied media reports that the
7 board had spoken openly about creationism at board
8 meetings leading up to the curriculum change. And
9 they and other witnesses continued to deny such
10 statements in depositions throughout this litigation.

11 Faced with what appeared to be surprisingly
12 contradictory evidence about what the board members
13 actually said, plaintiffs decided not to seek a
14 temporary restraining order so that this Court could
15 decide this case on a more complete record. Now we
16 have that record.

17 Matt, could you pull up Exhibit 21. This is
18 superintendent Nilsen's record of what board members
19 said at a board retreat on January 9th, 2002. Matt,
20 could you highlight Item C. Dr. Nilsen reported that
21 Alan Bonsell talked about creationism and prayer at
22 this board retreat.

23 Could you pull up Exhibit 25. This is
24 Dr. Nilsen's record of what board members said at a
25 board retreat on March 26, 2003. And could you

1 highlight Section D, again, under Mr. Bonsell. Again,
2 Dr. Nilsen reported Mr. Bonsell as talking about
3 creationism.

4 Could you pull up Exhibit 26, please. This
5 is Plaintiffs' Exhibit 26. This is a memorandum
6 received by Mr. Michael Baksa, the assistant
7 superintendent for the district, and copied to
8 Dr. Nilsen, the superintendent, reflecting what
9 Mr. Baksa told Bertha Spahr, the head of the Dover
10 High School Science Department, about a board member's
11 views on teaching evolution.

12 Matt, could you highlight the last sentence
13 of the first paragraph. A board member wanted
14 50 percent of the topic of evolution to involve the
15 teaching of creationism.

16 Could you pull up Exhibit 60, please. This
17 is a letter that Board Member Heather Geesey wrote to
18 the York Sunday News on June 27th, 2004. Could you
19 highlight the last paragraph, please. You can teach
20 creationism.

21 Could you pull up Exhibit 662. This is a
22 draft change to the Dover biology curriculum prepared
23 by Assistant Superintendent Michael Baksa. Could you
24 highlight the bottom section, please, Matt.
25 Creationism. And if you look at the text of this

1 draft change to the curriculum, it's remarkably
2 similar to the change that was actually approved,
3 though the final version had intelligent design, not
4 creationism.

5 And the entire Dover community is aware of
6 what Mr. William Buckingham, the chair of the
7 curriculum committee when this curriculum change was
8 passed, has said on this subject. (Tape played.)
9 "Such as creationism." Defendants refusal to admit
10 their advocacy of creationism in the face of
11 overwhelming evidence says everything about their true
12 motives.

13 What the board did was add creationism to
14 the biology curriculum under its new name, intelligent
15 design. You will hear from Barbara Forrest, an expert
16 on the history of intelligent design. She will
17 describe how the textbook Of Pandas and People that
18 the school district directs its students to was
19 conceived and developed as a creationist book and
20 changed the name of the concept it was promoting to
21 intelligent design after the Edwards decision held
22 that creation science could not be taught.

23 Indeed, the very definition of intelligent
24 design found in the Pandas book used in Dover is
25 identical to the definition of creationism found in

1 earlier drafts of that book. The publisher of Pandas,
2 like the Dover Area School Board, employed semantics,
3 wordplay, to obscure its clear religious creationist
4 project.

5 Dr. Forrest will also describe how the
6 leaders of the intelligent design movement are
7 carrying out a strategy, what they call the Wedge
8 strategy, to overturn the rules of modern science so
9 that you can include supernatural activity, so that
10 science can be Christian and theistic.

11 You will also hear from John Haught, a
12 theologian, who will explain that intelligent design
13 is not new science. It is old theology, the argument
14 for the existence of God that has been around for
15 centuries. He will also explain that it is not a
16 universal religious view, but rather a particular one
17 accepted by many people of faith but inconsistent with
18 the beliefs of many others.

19 Intelligent design is not identical in every
20 respect to the creation science previously addressed
21 by the Supreme Court in Edwards and other courts, but
22 in all essential aspects, it is the same. Intelligent
23 design really is a perfect example of evolution.
24 Throughout this century, religious opponents of
25 evolution, concerned that evolution contradicts a

1 literal reading of the Bible and promotes cultural
2 decay, have employed varying tactics to denigrate or
3 eliminate the theory of evolution in the minds of
4 young students.

5 They have tried forbidding the teaching of
6 evolution, promoting creationism or creation science
7 as an alternative to evolution, and singling out
8 evolution for special criticism. Each of those
9 tactics have been found unconstitutional by courts.
10 Confronted with that inhospitable legal environment,
11 creationists have adapted to create intelligent
12 design, creationism with the words "God" and "Bible"
13 left out.

14 They have promoted a book, Of Pandas and
15 People, that invokes a master intellect that shapes
16 clay into living form and then says, we're not
17 referring to anyone in particular. This clever
18 tactical repackaging of creationism does not warrant
19 different treatment under the Constitution.

20 The intelligent design movement has argued
21 and we expect you will hear defendants argue in this
22 courtroom that intelligent design has improved on
23 creationism by developing a scientific argument for
24 design. Defendants' own experts call it science in
25 its infancy, and if this is true, there is no

1 educational purpose in test-driving it with high
2 school students.

3 But intelligent design is not science in its
4 infancy, it's not science at all. You will hear from
5 Kenneth Miller, a biologist; Kevin Padian, a
6 paleontologist; Robert Pennock, a scientific
7 philosopher; and Brian Alters, an expert on teaching
8 science. They will testify about how science is
9 practiced and taught, why evolution is overwhelmingly
10 accepted as a scientific theory, and why intelligent
11 design has no validity as a scientific concept.

12 There is no data or laboratory work
13 demonstrating intelligent design. It is not a
14 testable hypothesis. It misrepresents established
15 scientific knowledge. Let's be perfectly clear, there
16 is no controversy in the scientific community about
17 the soundness of evolution and that intelligent design
18 is not a scientific topic at all.

19 Intelligent design has arguments with fancy
20 names like "irreducible complexity" and "specified
21 complexity," but these arguments are not a positive
22 case for intelligent design, just negative attacks on
23 evolution. And even those arguments have not been
24 advanced in the way that real working scientists do
25 every day, by publishing original data in

1 peer-reviewed scientific journals. In fact,
2 intelligent design admits that it is not science at
3 all unless science is completely redefined to include
4 the supernatural.

5 At this trial, you will hear the parties use
6 the term "methodological naturalism." Methodological
7 naturalism is the term used to describe science as
8 self-imposed limitation, that it will only consider
9 natural causes for natural phenomena. Science does
10 not consider supernatural explanations because it has
11 no way of observing, measuring, repeating, or testing
12 supernatural events. It doesn't mean that
13 supernatural events, including divine miracles, have
14 not happened, just that science cannot properly make
15 any statements about them.

16 But intelligent design will not accept the
17 well-established boundaries of science and openly
18 rejects methodological naturalism, the way science has
19 been practiced for centuries. Why? Because it has
20 to. In the end, no matter how many stones intelligent
21 design throws at the theory of evolution, the only
22 alternative it presents for the development and
23 diversity of life, the only explanation for how a
24 bacterial flagellum or the human eye came to be is a
25 miracle, an abrupt appearance, an act of supernatural

1 creation. That, by itself, establishes intelligent
2 design as a religious argument, not a scientific
3 argument, for the creation of biological life that
4 cannot be taught to public school students.

5 The district will argue that any
6 constitutional problem with its policy may be ignored
7 because the statement read to students is brief and
8 because it has promised not to teach intelligent
9 design or even allow students to ask questions about
10 it. This limitation, of course, raises the question,
11 what's the point? What possible secular educational
12 purpose could the policy have?

13 Plaintiffs' scientific and teaching experts
14 will explain that there is none. Worse yet, the
15 statement denigrates the theory of evolution in a way
16 that one of defendants' own experts describes as
17 misleading.

18 Of course, there is no such thing as a
19 little constitutional violation, and this policy
20 surely isn't one. The Dover board has imposed its
21 particular religious viewpoint on the students at
22 Dover High School and through a newsletter to the
23 entire Dover community.

24 Viewed in the context of the public
25 statements and actions by the board in developing and

1 implementing the policy, it can only be viewed by the
2 Dover High School students and Dover community as an
3 expression of the board's religious viewpoint and as
4 favoring a religious view about creation.

5 In the Edwards decision, the Supreme Court
6 underscored that it must be particularly vigilant in
7 monitoring compliance with the establishment clause in
8 elementary and secondary schools. Families entrust
9 public schools with the education of their children
10 but condition their trust on the understanding that
11 the classroom will not purposely be used to advance
12 religious views that may conflict with the private
13 beliefs of the students and his or her family.

14 The Dover School Board has violated these
15 parents' trust by imposing its own religious agenda on
16 Dover High School students and the Dover community.
17 And it has clearly divided the Dover community, which
18 could not help but conclude that its high school
19 curriculum now includes a religious proposition, the
20 21st Century version of creationism.

21 The evidence that I have described this
22 morning and much more evidence that you will hear
23 during the course of this trial will demonstrate that
24 the board had the purpose of promoting religion and
25 that its policy had that effect.

1 For those reasons, at the end of trial, we
2 will request that the Court enter an order finding
3 that the Dover School Board's change to its high
4 school biology curriculum is unconstitutional and ask
5 you to permanently enjoin the district from
6 implementing that curriculum change. Thank you, Your
7 Honor.

8 THE COURT: All right. Thank you,
9 Mr. Rothschild. Mr. Gillen, are you prepared to open?

10 MR. GILLEN: Thank you, Your Honor. Good
11 morning, Your Honor.

12 THE COURT: Good morning again to you.

13 MR. GILLEN: Patrick Gillen again from the
14 Thomas More Law Center on behalf of the defendants in
15 this action, the Dover Area School District and its
16 board of directors. Again I'd like to introduce my
17 colleagues at counsel's table, Dick Thompson and
18 Robert Muise. Absent from the courtroom but valued
19 collaborators in this effort, my colleagues Ed White
20 and Julie Shotzbarger.

21 Seated behind counsel's table, our clients,
22 the Dover Area School District, through its board of
23 directors, citizens elected by their constituents,
24 represent the interests of the parents and families of
25 the district, the students who are educated through

1 the hard work of the board, the administration,
2 faculty and staff of Dover Area School District.

3 Your Honor, it is our pleasure to appear on
4 behalf of our clients today because I am confident
5 that at the conclusion of these proceedings, you will
6 find that the evidence shows that these citizens
7 seated before you today were engaged in a legitimate
8 exercise of their lawful authority where they enacted
9 a modest change to the biology curriculum for the
10 purpose of enhancing science education, for the
11 evidence will show that the purpose and effect truly
12 at issue in this litigation is the purpose and effect
13 of a curriculum change that was worked out after a
14 process of deliberation involving the board, the
15 administration, the science faculty, and the public.

16 And it resulted in a modest four-paragraph
17 statement which mentions intelligent design, makes
18 students aware of the existence of the theory, makes
19 them aware that it's a theory of the origins of life
20 different from Darwin's theory of evolution. It
21 explains that there's a book in the library, Of Pandas
22 and People, that deals with intelligent design theory
23 or IDT.

24 In fact, the evidence will show that the
25 more recent statement points students to other books

1 in the library addressing intelligent design theory
2 and that three of those books are penned by the
3 plaintiffs' experts and critical of the theory. This
4 case is about free inquiry in education, not about a
5 religious agenda.

6 Your Honor, the evidence will also show that
7 this four-paragraph statement is the total actual
8 effect that the curriculum change has on science
9 instruction in the district, because apart from that
10 four-paragraph statement, science teachers teach
11 evolutionary theory as required by Pennsylvania state
12 standards. The use of texts presents the evolutionary
13 theory. Biology by Miller and Levine, one of the
14 coauthors, Ken Miller, is one of the plaintiffs'
15 experts in this case.

16 In this way, the evidence will show that
17 while students are taught evolutionary theory, they
18 are merely made aware of the existence of another
19 theory, the intelligent design theory, and that while
20 students are assigned a basal text that presents
21 evolutionary theory, they're merely made aware of the
22 existence of a reference text in the library that
23 deals with intelligent design theory, if they care to
24 check it out. And they are told that they will be
25 tested on evolutionary theory, as required by

1 Pennsylvania state standards.

2 Further, the evidence will show that
3 Superintendent Richard Nilsen, in response to concerns
4 addressed by science faculty about the implementation
5 of the curriculum change, issued specific guidelines
6 that intelligent design theory would not be taught,
7 that creationism would not be taught. Teachers would
8 not teach their own religious beliefs.

9 Now, there's no question, Your Honor, that
10 this final result was worked out through a contentious
11 policy-making process that has led some to liken
12 making legislation to making sausage, a process that
13 involved, at times, heated argument by members of the
14 public, members of the board, false charges and
15 intemperate remarks. But the evidence will show that
16 the consistent goal of the board, as a whole, was to
17 pursue what they believed to be a legitimate
18 educational purpose and to comply with the law.

19 Alan Bonsell is a perfect example. He came
20 to the board without any background in education of
21 the law, just a sincere desire to serve his fellow
22 citizens. By virtue of his personal reading, he was
23 aware of intelligent design theory and that 300 or so
24 scientists had signed a statement indicating that
25 biologists were exaggerating claims for the theory.

1 He had read about the famous Piltdown man
2 hoax. He had an interest in creationism. He wondered
3 whether it could be discussed in the classroom. Those
4 questions are not evidence of unconstitutional
5 conduct, Your Honor. They were quite legitimate.

6 In fact, the evidence will show that on the
7 very day of the March 26th, 2003 board retreat, the
8 assistant superintendent of the district, Mike Baksa,
9 attended a seminar sponsored by the Pennsylvania
10 School Boards Association given by a presenter with a
11 law degree from Harvard, a facilitator who was a
12 professor with a Ph.D. in the history of philosophy of
13 science. They discussed the issue because it was a
14 legitimate issue.

15 During that seminar, Mike Baksa heard the
16 view expressed that it would be useful and good
17 science education to at least introduce a discussion
18 of creationism into the biology curriculum. More
19 importantly, Your Honor, the evidence will show that
20 nothing came of those questions.

21 During his tenure as board curriculum
22 committee chair, Alan Bonsell never asked for any
23 change to the biology curriculum, the text or
24 instruction. He met with the science teachers in the
25 fall of 2003 and learned that they didn't teach

1 origins. It was too problematic. They focused on
2 change within species. They mentioned creationism,
3 but they didn't teach it, that's what they told him,
4 because they thought it would be illegal. And that
5 was the end of the matter. He asked legitimate
6 questions. He got legitimate answers. That was the
7 end.

8 When Bill Buckingham tried to hold up the
9 purchase of the basal text in August of 2004, the text
10 authored by one of the plaintiffs' experts, Bonsell
11 voted against that because he believed the students
12 should have the book recommended by the science
13 faculty, quite apart from whether the board approved
14 the use of Pandas and People.

15 And on the night, the very night that the
16 board approved the curriculum change at issue here,
17 when the science faculty expressed concerns that the
18 inclusion of the mention of intelligent design in the
19 curriculum would require them to teach it, although
20 they did not teach origins, it was Bonsell who
21 appended the note to the curriculum which made it
22 clear that they would not be required to teach
23 intelligent design theory.

24 He did that because he understood they did
25 not teach origins, and they understood that

1 intelligent design theory, as indicated by the
2 subtitle of the book, Of Pandas and People, deals with
3 the question of biological origins.

4 Your Honor, the evidence will show something
5 very critical in this case, that Bill Buckingham did
6 not exercise a determinative impact on this
7 policy-making process. Not at all. In fact, the
8 evidence will show that the board listened to the
9 science faculty more than it listened to Bill
10 Buckingham.

11 Bill Buckingham wanted the text, Of Pandas
12 and People, approved with the basal text. He wanted
13 it purchased with school money. He wanted it used in
14 the classroom. He wanted the intelligent design
15 theory presented side by side with evolutionary theory
16 as if in dialogue. The teachers objected, and the
17 board agreed with the teachers.

18 Now, it's true at the end of the day the
19 board didn't agree with everything the teachers said.
20 The board believed that intelligent design was not
21 creationism. They knew what that was, the Book of
22 Genesis. They concluded that intelligent design was
23 science. They looked at the text of Pandas and
24 People. That's not the Book of Genesis.

25 They believed it was a legitimate

1 educational goal to make students aware of the
2 existence of another scientific theory, but they
3 agreed with the teachers' objections that for
4 practical reasons, students shouldn't be taught
5 intelligent design theory.

6 Your Honor, the evidence will also
7 demonstrate that the board quite rightly concluded
8 that its modest curriculum change would, in fact,
9 enhance the biology curriculum and that the primary
10 effect of their policy would be to advance science
11 education, not religion.

12 Defendants' expert will show this Court that
13 intelligent design theory, IDT, is science, a theory
14 that's advanced in terms of empirical evidence and
15 technical knowledge proper to scientific and academic
16 specialties. It is not religion. This expert
17 testimony will also demonstrate that making students
18 aware of gaps and problems in evolutionary theory is
19 good science education. It's good liberal education.

20 Dr. Michael Behe will offer you his opinion
21 in this case. He will explain the basis for his
22 opinion that the insights into the biochemical
23 complexity of the cell, made possible by modern
24 microbiology, have undermined the claims made for
25 natural selection, the mechanism at the center of

1 evolutionary theory.

2 Likewise, Dr. Behe will explain that
3 evolutionary theory does have gaps and problems and
4 that it's good science education to make students
5 aware of those gaps and problems, make them aware of
6 the intelligent design theory.

7 The evidence will show that Dr. Behe takes
8 these positions and posits his thesis of irreducible
9 complexity pointing to design not because evolutionary
10 theory is inconsistent with his religious beliefs.
11 It's not. Not because he believes in creationism. He
12 doesn't. And as he'll explain, creationism and
13 intelligent design are two very different things.
14 Dr. Behe takes these positions because the empirical
15 evidence points in that direction.

16 You will also hear testimony from Dr. Scott
17 Minnich. Dr. Minnich received his Ph.D. from Iowa
18 State University in 1981. He was a post-doctoral
19 fellow at Purdue and then Princeton. Since 1987, he
20 has taught microbiology extensively at the
21 undergraduate and graduate, including medical school,
22 levels.

23 Dr. Minnich will testify that IDT is
24 science, not religion. He will explain that design
25 principle, design theory, drives his sophisticated

1 research in the lab. He will testify that Of Pandas
2 and People is a good text, a little dated, but one
3 that asks critical questions about the mechanism of
4 natural selection, which is a centerpiece of
5 evolutionary theory, that it makes students aware of
6 gaps and problems in the theory. Dr. Minnich will
7 testify that this is good science education and it's
8 good for science.

9 Dr. Dick Carpenter will also provide
10 testimony. He's an assistant professor in educational
11 leadership at the University of Colorado. He's an
12 expert in educational policy and practice. He will
13 testify that DASD's curriculum policy advances
14 legitimate secular educational goals, promotes
15 critical thinking, gives students a fuller
16 understanding of evolutionary theory, including its
17 strengths and weaknesses, something that's mentioned
18 in the basal text authored by the plaintiffs' expert.

19 In this way, he'll show that Dover's modest
20 curriculum change actually brings it more into line
21 with Pennsylvania's academic standards, which require
22 that students be able to critically assess the status
23 of existing theories, and, insofar as it helps
24 students grasp the controversy that can surround
25 science, points to a goal that's included in the

1 Santorum amendment, the No Child Left Behind Act.

2 Dr. Steven Fuller will also testify for the
3 defendants. He has a master's in philosophy and
4 history of science from Cambridge University, a Ph.D.
5 in the philosophy of science from the University of
6 Pittsburgh. He's the author of eleven books, over 200
7 articles and chapters and books that have been
8 peer-reviewed.

9 He was the first post-doctoral fellow in the
10 history of philosophy of science at the United States
11 National Science Foundation, the first research fellow
12 in the Public Understanding of Science at the United
13 Kingdom's Council for Economic and Social Research.
14 His works have been translated into 15 languages. He
15 has been a visiting professor in the United States,
16 Sweden, Denmark, the Netherlands, Israel, and Japan.

17 Dr. Fuller will testify that intelligent
18 design is science, not religion, that the convention
19 of methodological naturalism, which some would use to
20 disqualify intelligent design theory from science, is
21 by no means a necessary feature of scientific inquiry,
22 and that scientific progress has taken place without
23 any commitment to methodological naturalism.

24 He will also testify that efforts to
25 disqualify IDT from science based upon causation or

1 testability or other so-called demarcation criteria,
2 including so-called methodological naturalism, are
3 inherently flawed. Dr. Fuller will explain that
4 intelligent design theory is not creationism. It is
5 not inherently religious. He will also explain, for
6 that matter, that any number of phenomena we now
7 understand, whether it's gravity or the wave-particle
8 duality of quantum mechanics, were once thought to be
9 supernatural.

10 Finally, Dr. Warren Nord will testify for
11 the defendants. Dr. Nord is a professor in the
12 philosophy of education and philosophy of religion at
13 the University of North Carolina Chapel Hill. Nord
14 will testify that intelligent design theory is not
15 religion. He will explain that efforts to exclude
16 intelligent design theory from science based on
17 so-called methodological naturalism actually result
18 from a philosophical naturalism which is, itself, a
19 nonscientific principle.

20 He will also explain that from the
21 standpoint of the philosophy of education, liberal
22 education, the thesis posited by intelligent design
23 theorists gains greater strength when seen in a larger
24 context, whether the fine-tuning of the universe which
25 physicists looked at so statistically improbable but

1 so necessary to support life on earth or work in the
2 area of phenomena such as the mind.

3 Dr. Nord will also explain the basis for his
4 opinion that the board's modest curriculum change is a
5 step in the right direction for science education and
6 consistent with national science education standards
7 precisely because it makes students aware that there
8 are scientific disputes over claims advanced by rival
9 theories, something students should know in order to
10 have a realistic sense of this critical dimension of
11 scientific progress.

12 Taken together, this expert testimony will
13 confirm the defendants' judgment by showing that
14 intelligent design theory is not creationism. Indeed,
15 it does not even require the action of a supernatural
16 creator, that intelligent design is not religion or
17 inherently religious, that intelligent design theory
18 is science. It's a theoretical argument advanced in
19 terms of empirical evidence, technical knowledge
20 proper to scientific and academic specialties.

21 Indeed, the evidence will further show that
22 intelligent design theory is really science in its
23 purest form, the refusal to foreclose possible
24 explanations based on the claims of the dominant
25 theory or the conventions of the day, to proceed from

1 the same sort of perspective that led Newton to
2 explore and ultimately explicate gravity.

3 It shares the attitude of those who worked
4 in the field of quantum mechanics, who posited the
5 wave-particle duality, despite the fact that to some
6 it smacked of the supernatural. It shares the
7 determination of scientists who this very day will
8 look at paranormal phenomena or phenomena that defy
9 our current understanding such as the mind.

10 For just these reasons, the defendants'
11 expert testimony will show that Dover's modest
12 curriculum change embodies the essence of liberal
13 education, an education that frees the mind from the
14 confines, the constraints, the conventions of the day,
15 and, in so doing, promotes the curiosity, the critical
16 thinking, the quest for knowledge that has served our
17 country so well.

18 In conclusion, Your Honor, I respectfully
19 submit that the evidence will show that the primary
20 purpose and primary effect of Dover's modest but
21 plainly significant curriculum change is to advance
22 the very sort of legitimate educational goal which the
23 United States Supreme Court recognized in *Edwards*
24 *versus Aguillard*, what the Supreme Court of the United
25 States acknowledged, with approval, that school boards

1 could quite properly require the teaching, never mind
2 mention, about the theories of origin for legitimate
3 secular educational purposes.

4 Your Honor, we look forward to presenting a
5 defense in this case. Thank you.

6 THE COURT: All right. Thank you,
7 Mr. Gillen.

8 (Whereupon, the Opening Statements were
9 concluded.)
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1 CERTIFICATION

2 I hereby certify that the proceedings and
3 evidence are contained fully and accurately in
4 the notes taken by me on the within
5 proceedings and that this copy is a correct
6 transcript of the same.

7 Dated in Harrisburg, Pennsylvania, this
8 27th day of September, 2005.
9

10
11 /s/ Lori A. Shuey
12 Lori A. Shuey, RPR, CRR
13 Official Court Reporter
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