

## Montana Law Review

---

Volume 68  
Issue 1 *Winter 2007*

Article 3

---

1-2007

# Disaster in Dover: The Trials (and Tribulations) of Intelligent Design

Peter Irons

*Professor of Political Science, UC San Diego*

Follow this and additional works at: <https://scholarship.law.umt.edu/mlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Peter Irons, *Disaster in Dover: The Trials (and Tribulations) of Intelligent Design*, 68 Mont. L. Rev. 59 (2007).

Available at: <https://scholarship.law.umt.edu/mlr/vol68/iss1/3>

This Article is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Montana Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

## DISASTER IN DOVER: THE TRIALS (AND TRIBULATIONS) OF INTELLIGENT DESIGN\*

Peter Irons\*\*

### I. INTRODUCTION

There is a certain whistling-past-the-graveyard tone in the title of the article to which this commentary is a response. In predicting that “Intelligent Design Will Survive *Kitzmiller v. Dover*,”<sup>1</sup> its authors seem to concede that the decision of U.S. District Judge John E. Jones III in the *Kitzmiller* case inflicted a serious wound on the intelligent design (ID) movement.<sup>2</sup> More to the point, the Seattle-based Discovery Institute (DI), with which all three authors (DI authors) are affiliated, has been “scrambling to rebound” from this judicial rebuke to its decade-long and heavily-financed efforts to promote ID as a legitimate scientific “alternative” to Darwinian evolution in public school science classes.<sup>3</sup> Despite the blithe assurance of the DI authors that ID will survive the *Kitzmiller* ruling because of the “many fatal flaws”<sup>4</sup> in Judge Jones’s opinion, a more candid assessment of its impact (and the source of this commentary’s title) came from the Discovery Institute’s own president, Bruce Chapman: “Dover is a disaster in a sense, as a public-relations matter. . . . It has given a rhetorical weapon to the Darwinists to say a judge has settled this.”<sup>5</sup>

---

\* Editors’ Note: The present Article is the second in a series of three discussing *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (M.D. Pa. 2004). In the first article, Discovery Institute authors David K. DeWolf, John G. West and Casey Luskin criticize the *Kitzmiller* decision. *Intelligent Design Will Survive Kitzmiller v. Dover*, 68 Mont. L. Rev. 7 (2007). The Discovery Institute authors rebut the present Article in *Rebuttal to Irons*, 68 Mont. L. Rev. 89 (2007). The entire series is preceded by *Editors’ Note: Intelligent Design Articles*, 68 Mont. L. Rev. 1 (2007), which includes a chronology of important events.

\*\* Professor of Political Science, Emeritus, University of California, San Diego; B.A., Antioch College; M.A. and Ph.D., Boston University; J.D., Harvard Law School. This commentary draws upon the chapter on the intelligent design controversy and the *Kitzmiller* case in the author’s book, *God on Trial: Dispatches from America’s Religious Battlefields* (Viking Press 2007). Readers who would like to see a reply to the rebuttal to this Article can obtain one by e-mailing the author at [piron@ucsd.edu](mailto:piron@ucsd.edu).

1. David K. DeWolf, John G. West & Casey Luskin, *Intelligent Design Will Survive Kitzmiller v. Dover*, 68 Mont. L. Rev. 7 (2007) [hereinafter DeWolf et al., *Intelligent Design*].

2. *Id.*

3. David Postman, *Seattle’s Discovery Institute Scrambling to Rebound after Intelligent-Design Ruling*, *Seattle Times* A1 (Apr. 26, 2006).

4. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 8.

5. Postman, *supra* n. 3 at A1.

Before we proceed any further, let me urge (even implore) readers of this exchange to read the full text of Judge Jones's opinion in the *Kitzmiller* case.<sup>6</sup> In this lengthy and exhaustive opinion, based on twenty-one days of testimony by thirty-three witnesses, dozens of pre-trial depositions, and hundreds of exhibits, Judge Jones—in my view—both anticipated and answered every one of the charges leveled by the DI authors in their article. The purpose of this commentary is not so much to defend Judge Jones's opinion, which speaks for itself, but rather to provide some background to better understand the complaints of the DI authors and their efforts at damage control in the wake of the Dover disaster, beginning with their broadside and hyperbolic attacks on Judge Jones, a campaign in which the preceding article—albeit more temperate in tone—is the most recent salvo.

## II. THE DISCOVERY INSTITUTE'S EFFORTS TO "SWIFT-BOAT" JUDGE JONES<sup>7</sup>

Judge Jones issued his *Kitzmiller* opinion on December 20, 2005.<sup>8</sup> The ink was hardly dry before one of the DI authors, John West, responded on the Institute's Web site under the heading "Dover in Review."<sup>9</sup> West fired a barrage of *ad hominem* volleys at Judge Jones, accusing him of having "delusions of grandeur"<sup>10</sup> and of being "an incredibly sloppy judge who selects the facts to fit the result he wants."<sup>11</sup> Judge Jones viewed the *Kitzmiller* case, West alleged, as "his chance to play philosopher king"<sup>12</sup> and to secure "his place in judicial history."<sup>13</sup> West disputed the media's portrayal of the judge, who was named to the federal bench in

---

6. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2004).

7. Kevin Padian & Nick Matzke, *National Center for Science Education, Discovery Institute Tries to "Swift-Boat" Judge Jones*, [http://www.ncseweb.org/resources/articles/127\\_discovery\\_institute\\_tries\\_to\\_1\\_4\\_2006.asp](http://www.ncseweb.org/resources/articles/127_discovery_institute_tries_to_1_4_2006.asp) (Jan. 4, 2006).

8. *Kitzmiller*, 400 F. Supp. 2d at 707.

9. John G. West, Discovery Inst., *Dover in Review: A Review of Judge Jones' Decision in the Dover Intelligent Design Trial*, <http://discovery.org/scripts/viewDB/index.php?command=view&id=3135> (Jan. 6, 2006) [hereinafter West, *Dover in Review*].

10. *Id.*

11. *Id.*

12. Patrick W. Gavin, Editorial, *Defending Intelligent Design after Dover*, Wash. D.C. Examiner (July 19, 2006) (available at <http://www.examiner.com/articlePDF.cfm?articleID=18242>).

13. West, *Dover in Review*, *supra* n. 9.

2002 by President George W. Bush,<sup>14</sup> and who attended Lutheran services, “as a conservative Republican who is devoutly religious.”<sup>15</sup> Noting that Jones’s “political mentor” was Tom Ridge,<sup>16</sup> a former Pennsylvania governor,<sup>17</sup> West disparaged Ridge as “a fairly liberal ‘pro-choice’ Republican,”<sup>18</sup> insinuating that Ridge’s support for abortion rights somehow tainted Judge Jones’s *Kitzmiller* opinion.<sup>19</sup>

Moving to another red-meat issue of dubious relevance to the *Kitzmiller* case, West wrote that Jones “does not seem in sync with most conservatives’ attitudes toward crime and punishment.”<sup>20</sup> Before Jones had become a judge, he served by appointment as a part-time county public defender in criminal cases.<sup>21</sup> Referring to Jones’s Senate confirmation hearings, West stated that Jones “spoke with pride about defending a murderer of a twelve-year old boy and how he was able to get the murderer spared from the death penalty,” insinuating that Jones was soft on crime.<sup>22</sup> Jones, in fact, had told the Senate Judiciary Committee that he “was very proud to do that as an assistant public defender consistent with my obligations as an attorney.”<sup>23</sup> As West should have known, Jones was acting in this case as every attorney is required to do in defending his or her client, regardless of the public outcry.

One might fairly ask what possible relevance to the *Kitzmiller* case West discerned in Governor Ridge’s views on abortion rights, or Judge Jones’s church membership (or non-membership), or his efforts to spare a convicted murderer from the death penalty. The answer, in my view, stems from the fact (discussed at greater length below) that the constituency from which the DI draws a major part of its funding, and to which it pitches its propaganda, consists largely of conservative, evangelical Christians for whom

---

14. U.S. Dist. Ct., Middle Dist. Pa., *Biography of Judge John E. Jones III*, <http://www.pamd.uscourts.gov/kitzmiller/jonesbio.htm> (accessed Feb. 12, 2007) [hereinafter *Biography of Judge Jones*].

15. John G. West, *Discovery Inst., Dover in Review, pt. 4: Are the Newsmedia Reinventing Judge Jones as a Conservative Republican?* [http://www.evolutionnews.org/2005/12/dover\\_in\\_review\\_pt\\_4\\_are\\_the\\_n\\_1.html](http://www.evolutionnews.org/2005/12/dover_in_review_pt_4_are_the_n_1.html) (updated Oct. 28, 2006) [hereinafter West, *Dover in Review, pt. 4*].

16. *Id.*

17. White House, *Biography of Secretary Tom Ridge*, <http://www.whitehouse.gov/home/land/ridgebio.html> (accessed Feb. 12, 2007).

18. West, *Dover in Review, pt. 4, supra* n. 15.

19. *Id.*

20. *Id.*

21. *Biography of Judge Jones, supra* n. 14.

22. West, *Dover in Review, pt. 4, supra* n. 15.

23. *Id.*

abortion, capital punishment, and evolution are linked in the “cultural war” against the “secular humanists” they see as enemies of Christian orthodoxy.<sup>24</sup> From this perspective, West’s attacks on Judge Jones reflect more than the pique of a sore loser; they also employ code words in the political lexicon of the Religious Right.

West’s initial response to the *Kitzmiller* opinion, in his posts on the DI’s Web site, formed the basis for the next salvo in the Institute’s damage control campaign.<sup>25</sup> In March 2006, the DI authors collaborated on a short book, published in-house by the Discovery Institute Press, entitled *Traipsing into Evolution: Intelligent Design and the Kitzmiller vs. Dover Decision*.<sup>26</sup> Within the space of sixty-nine pages, the DI authors leveled more than thirty charges of judicial bias against Judge Jones.<sup>27</sup> Repeating West’s claim that Jones “yearned for his place in judicial history,”<sup>28</sup> the *Traipsing* authors accused him of “repeatedly misrepresenting the facts”<sup>29</sup> of the case, of presenting a “shallow and one-sided recital of the history of intelligent design,”<sup>30</sup> and of writing “an opinion so broad as to make the most activist of judges envious.”<sup>31</sup> Dismissing Jones’s opinion as “little more than an impassioned closing argument from Darwin’s public defender,”<sup>32</sup> the DI authors argued that “Judge Jones’ message is clear: give Darwin only praise, or else face the wrath of the judiciary.”<sup>33</sup>

It bears noting at this point that in 2005, clearly anticipating the judicial disaster of the *Kitzmiller* case, the DI hired a public relations firm, Creative Response Concepts, for assistance in the DI’s damage control efforts.<sup>34</sup> This firm’s clients included not only the Republican National Committee and the Christian Coalition, but also the “Swift Boat Veterans for Truth,” the GOP-affiliated group whose TV ads had attacked the Vietnam War record and

---

24. Peter Irons, *God on Trial: Dispatches from America’s Religious Battlefields* at xv–xvi, 50 (Viking Press 2007) [hereinafter Irons, *God on Trial*].

25. E.g. West, *Dover in Review*, pt. 4, *supra* n. 15.

26. David K. DeWolf, John G. West, Casey Luskin & Jonathan Witt, *Traipsing into Evolution: Intelligent Design and the Kitzmiller v. Dover Decision* (Discovery Inst. Press 2006) [hereinafter DeWolf et al., *Traipsing*].

27. *Id.*

28. *Id.* at 12 (citing Bill Sulon, “No Dover Withdrawal for Me,” *Intelligent-Design Trial Judge Says*, Patriot News (Harrisburg, Pa.) (Nov. 18, 2005)).

29. *Id.* at 25.

30. *Id.* at 16.

31. *Id.* at 74.

32. DeWolf et al., *Traipsing*, *supra* n. 26, at 57.

33. *Id.* at 77.

34. Creative Response Concepts, *Clients*, <http://www.crc4pr.com/firm/clients.asp> (accessed Nov. 8, 2006).

patriotism of Senator John Kerry during his unsuccessful 2004 presidential campaign against President Bush.<sup>35</sup> The “swift-boating” of Judge Jones in John West’s initial response to the *Kitzmiller* decision, and its elaboration in the DI’s *Traipsing* book, followed the old adage that “the best defense is a good offense.” By taking the offensive against Judge Jones, the DI tried to recover from its fumbles in the *Kitzmiller* case.

### III. THE “FATAL FLAWS” IN THE DI’S ATTACK ON THE *KITZMILLER* OPINION

Considering the ferocity of the Discovery Institute’s attacks on Judge Jones and his *Kitzmiller* opinion, one might wonder what prompted these responses. After all, the DI authors conceded that Jones properly ruled unconstitutional the Dover school board’s decisions to mention ID to ninth-grade biology students as an alternative to the Darwinian theory of evolution,<sup>36</sup> and to refer students to the book *Of Pandas and People*<sup>37</sup> as a reference source. In their *Traipsing* book, the DI authors wrote, “Judge Jones found that the Dover school board acted for clearly religious reasons rather than for a legitimate secular purpose . . . . Supreme Court precedents required the conclusion that the policy adopted by the Dover board was unconstitutional.”<sup>38</sup>

So what’s all the fuss about? The answer to this question lies in the DI’s complaints that Judge Jones went beyond his concededly correct ruling on the unconstitutionality of the Dover board’s policy in also ruling that “ID is a religious view, a mere re-labeling of creationism, and not a scientific theory.”<sup>39</sup> This holding undermines, and in fact contradicts, the DI’s repeated claims that ID is a legitimate scientific theory and is not rooted in any religious doctrine or belief.<sup>40</sup> Judicial findings against these claims make it risky for any school board to consider adding ID to its science curriculum as an “alternative” to evolution, with the virtual certainty of costly lawsuits before judges who will have Judge Jones’s ex-

---

35. Michael Dobbs, *Swift Boat Accounts Incomplete*, Wash. Post A1 (Aug. 22, 2004).

36. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 16.

37. Percival Davis & Dean H. Kenyon, *Of Pandas and People: The Central Question of Biological Origins* (Charles B. Thaxton ed., 2d ed., Houghton Publ. Co. 1993) [hereinafter Davis & Kenyon, *Pandas*].

38. DeWolf et al., *Traipsing*, *supra* n. 26, at 11.

39. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 726 (M.D. Pa. 2005).

40. See John G. West, Discovery Inst., *Intelligent Design and Creationism Just Aren't the Same*, <http://www.discovery.org/scripts/viewDB/index.php?command=view&id=1329> (Dec. 1, 2002).

haustive opinion for guidance. As the DI authors note, Jones explained why he felt it “incumbent upon the Court”<sup>41</sup> to address the issue of “whether ID is science”<sup>42</sup> and that this inquiry was “essential to [the court’s] holding that an Establishment Clause violation has occurred in this case”<sup>43</sup> in terms of “prevent[ing] the obvious waste of judicial and other resources which would be occasioned by a subsequent trial involving the precise question which is before us.”<sup>44</sup>

In *Traipsing*, the DI authors accuse Judge Jones of “stunning presumption”<sup>45</sup> in ruling that ID is not science and “has utterly no place in a science curriculum.”<sup>46</sup> The DI authors argue that “[l]ongstanding U.S. Supreme Court precedent”<sup>47</sup> militates against “decid[ing] questions beyond the necessities of the immediate issue.”<sup>48</sup> As a general proposition, this is sound advice. In my view, however, the “fatal flaw” in the DI’s attack on the *Kitz-miller* opinion stems from the DI authors’ failure to grasp that deciding the question of whether ID is science *was* essential to Judge Jones’s ruling against the Dover school board’s effort to include ID in the biology curriculum. The reason is simple. If ID is, in fact, a legitimate scientific theory, as its proponents claim, it might well have a place in the science curriculum. And if so, the religious motives of the Dover board members who adopted the ID policy become irrelevant, as do the religious beliefs of ID proponents.

Consider, for example, civil rights legislation. Even if legislators who sponsor such laws proclaim their belief that racial discrimination is morally sinful and violates Biblical commands, the purely secular nature of civil rights laws makes these professions of religious belief irrelevant to their constitutionality. But if a challenged law or official policy—such as the Dover board’s ID statement—exhibits a religious purpose, or has the “principal or primary effect” of advancing religion, the religious motivations of its sponsors are relevant to the judicial inquiry into its constitutionality.

On this crucial issue, the DI authors cite the so-called *Lemon* test, in which the Supreme Court set out the “purpose” and “ef-

---

41. *Kitz-miller*, 400 F. Supp. 2d at 734.

42. *Id.* at 735.

43. *Id.*

44. *Id.*

45. DeWolf et al., *Traipsing*, *supra* n. 26, at 13.

46. *Kitz-miller*, 400 F. Supp. 2d at 745.

47. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 15.

48. *Id.* (quoting *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926)).

fect” tests in Establishment Clause cases.<sup>49</sup> In an undoubtedly unintentional slip, which they may well regret, the DI authors have effectively given away the store with their concession that under the *Lemon* test, “all that was necessary [for Judge Jones] to determine that an Establishment Clause violation had occurred was to find that the Dover school board members had predominantly religious motivations for enacting their ID policy.”<sup>50</sup> To repeat, those religious motivations would have been irrelevant if ID was in fact a legitimate scientific alternative to Darwinian evolution. Thus, in my view, Judge Jones was *required* to raise and answer this question, based on the voluminous record before him, which his opinion lays out in some five thousand words.<sup>51</sup>

#### IV. JUDGE JONES CORRECTLY DECIDED THAT ID “IS GROUNDED IN THEOLOGY, NOT SCIENCE”

Despite the DI authors’ protestations that ID is not grounded in theology,<sup>52</sup> and that it takes an agnostic position on whether the “intelligent designer” is natural or supernatural in character,<sup>53</sup> the evidence is overwhelming that ID *is* grounded in theology. The statements of its proponents, most of them Fellows of the Discovery Institute, are clear and unambiguous on this question. As Judge Jones found, “the writings of leading ID proponents reveal that the designer postulated by their argument is the God of Christianity.”<sup>54</sup> It is not just that many ID proponents also happen to be Christians (as are many proponents of evolution),<sup>55</sup> but that Christian doctrine forms the grounding of ID and is essential to ID’s positing of a “master intellect”<sup>56</sup> behind the “special creation”<sup>57</sup> of the human species.

---

49. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

50. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 15.

51. I urge readers to read Judge Jones’s discussion on “Whether ID is Science.” *Kitzmiller*, 400 F. Supp. 2d at 735–46.

52. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 27.

53. *Id.* at 19 n. 71; Discovery Inst., *Center for Science and Culture, Top Questions*, <http://www.discovery.org/csc/topQuestions.php> (accessed Mar. 26, 2007).

54. *Kitzmiller*, 400 F. Supp. 2d at 719.

55. See DeWolf et al., *Intelligent Design*, *supra* n. 1, at 27.

56. John G. West, Discovery Inst., *Dover in Review*, pt. 3: *Did Judge Jones Accurately Describe the Content and Early Versions of the ID Textbook Of Pandas and People?* [http://www.evolutionnews.org/2005/12/dover\\_in\\_review\\_pt\\_3\\_did\\_judge.html](http://www.evolutionnews.org/2005/12/dover_in_review_pt_3_did_judge.html) (Dec. 28, 2005).

57. E.g. J. Frank Cassel, J. of the Am. Sci. Affiliation, *JASA Book Reviews for June 1968*, <http://www.asa3.org/ASA/BookReviews1949-1989/6-68.html> (accessed Mar. 19, 2007) (reviewing Wayne Frair & P. William Davis, *The Case for Creation* (Moody Press 1967)).



Exhibit A on this question comes from the DI itself, in the form of the so-called “Wedge” document,<sup>58</sup> which requires some background explication. The acknowledged intellectual godfather of the ID movement (IDM) is Phillip Johnson, a retired law professor at the University of California, Berkeley.<sup>59</sup> Johnson, who has no training in biology, experienced a mid-life conversion to Christianity and has since devoted himself to propagating ID theory and building the IDM.<sup>60</sup> His 1991 book, *Darwin on Trial*,<sup>61</sup> has become the IDM’s Bible, so to speak. In testifying that “God is objectively real as Creator and recorded in the biological evidence,”<sup>62</sup> Johnson explicitly linked theology and biology. Judge Jones, in his *Kitzmiller* opinion, also quoted Johnson’s claim that the “Darwinian theory of evolution contradicts not just the Book of Genesis, but every word in the Bible from beginning to end. It contradicts the idea that [humans] are here because a creator brought about our existence for a purpose.”<sup>63</sup> Significantly, at least in my view, the DI authors do not mention Johnson in their article, although he has long been associated with the DI as a program advisor.

Even more conclusive evidence of ID’s grounding in Christian theology comes from the “Wedge” document, which Johnson developed, and from which Judge Jones quoted extensively in his opinion.<sup>64</sup> In this document, first circulated by the DI in 1999 under the title, “The Wedge Strategy,”<sup>65</sup> the DI announced as its long-range goal “nothing less than the overthrow of materialism and its cultural legacies,”<sup>66</sup> which it attributed to such “thinkers as Charles Darwin, Karl Marx, and Sigmund Freud.”<sup>67</sup> The document’s authors presented ID as an alternative to Darwinism in these words: “If we view the predominant materialistic science as

---

“The Christian can present special creation as an alternative to the doctrine of organic evolution.” *Id.*

58. Ctr. for the Renewal of Sci. & Culture, *The Wedge Strategy* (available at <http://www.antievolution.org/features/wedge.html> (accessed Mar. 21, 2007)) [hereinafter *Wedge Strategy*].

59. U. of Cal., Berkeley, *School of Law, Profiles: Phillip E. Johnson*, <http://www.law.berkeley.edu/faculty/profiles/facultyProfile.php?facID=57> (accessed Feb. 13, 2007).

60. Michael Powell, *Doubting Rationalist: “Intelligent Design” Proponent Phillip Johnson, and How He Came to Be*, Wash. Post D1 (May 15, 2005).

61. Phillip E. Johnson, *Darwin on Trial* (2d ed., InterVarsity Press 1993).

62. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 719 (M.D. Pa. 2005).

63. *Id.*

64. *Id.* at 719–20 (citing *Wedge Strategy*, *supra* n. 58).

65. *Wedge Strategy*, *supra* n. 58.

66. *Id.* at “Introduction.”

67. *Id.*

a giant tree, our strategy is intended to function as a ‘wedge’ that, while relatively small, can split the trunk . . . at its weakest points.”<sup>68</sup> Presumably, Darwinian evolution was a weaker point of the “materialist” philosophy than Marxian socialism or Freudian psychoanalysis. The DI’s “Wedge” strategists offered “a positive scientific alternative to materialistic scientific theories, which has come to be called the theory of intelligent design (ID). Design theory promises to reverse the stifling dominance of the materialist worldview, and to replace it with a science consonant with Christian and theistic convictions.”<sup>69</sup>

Could it be any more clear, based upon the DI’s own strategic planning document, that ID (whatever its pretensions to scientific legitimacy) is grounded in Christian theology, and exhibits both the “purpose” and “effect” of advancing religion, thus violating the first two prongs of the *Lemon* test?<sup>70</sup> In his discussion of the “Wedge” document, Judge Jones concluded that the DI “expressly announces . . . a program of Christian apologetics to promote ID.”<sup>71</sup> Not surprisingly, the DI authors, forced to confront the “Wedge” document in their article, quote none of the words in the paragraph above, but rather cite its “five-year goal” of promoting “intelligent design theory as an accepted alternative in the sciences” and its “twenty-year goal” of replacing evolution with ID “as the dominant perspective in science.”<sup>72</sup> The first of these goals, as the Dover “disaster” leaves no doubt, has not been achieved; the latter seems unlikely to succeed.

#### V. “FOLLOW THE MONEY”: THE DI’S CREATION BY CREATIONISTS

The old adage that “he who pays the piper calls the tune” is well suited to the Center for Science and Culture (CSC), the DI’s pro-ID branch with which the DI authors are affiliated.<sup>73</sup> They blandly describe the CSC’s purpose as supporting “research and public education with regard to controversies surrounding ID and neo-Darwinian theory,”<sup>74</sup> but say nothing about its origins and

---

68. *Id.* at “Five Year Strategic Plan Summary.”

69. *Id.* Readers with any lingering doubts about the religious basis of ID are urged to read the entire *Wedge Strategy*, *supra* n. 58.

70. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

71. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 720 (M.D. Pa. 2005).

72. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 51 (citing *Wedge Strategy*, *supra* n. 58).

73. Discovery Inst., *Center for Science and Culture, Fellows*, <http://www.discovery.org/csc/fellows.php> (accessed Feb. 13, 2007) [hereinafter Discovery Inst., *Fellows*].

74. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 9.

sponsors, which I think are essential as background to the DI authors' article.

The CSC was created in 1995 with a pledge for \$250,000 per year for three years from Howard Ahmanson, Jr.'s family.<sup>75</sup> Bruce Chapman, the DI's co-founder and president, met Ahmanson through Stephen Meyer, a philosophy and theology professor who tutored one of Ahmanson's children.<sup>76</sup> Meyer taught at Palm Beach Atlantic University in Florida,<sup>77</sup> a Christian school that requires faculty members "believe in the divine inspiration of the Bible, both of the Old and New Testaments; that man was directly created by God."<sup>78</sup> Ahmanson himself is a creationist,<sup>79</sup> and was also a supporter and major contributor to the Chalcedon Foundation, a "Biblical Reconstructionist" group that advocates the replacement of secular law with legal codes based on Mosaic law, including the death penalty for such practices as adultery and homosexuality.<sup>80</sup> Ahmanson, who sits on the DI's board of directors, has stated his goal as "the total integration of biblical law into our lives."<sup>81</sup>

With Meyer as director, the CSC has become the "No. 1 project" of the DI, whose yearly budget of some \$4 million comes largely from wealthy fundamentalist Christians and Christian foundations.<sup>82</sup> These include the Maclellan Foundation, whose director said of its DI donation, "We give for religious purposes. This is not about science, and Darwin wasn't about science. Dar-

---

75. Roger Downey, *Discovery's Creation*, Seattle Weekly (Feb. 1, 2006) (available at <http://www.seattleweekly.com/news/0605/discovery-darwin.php>).

76. *Id.*

77. Discovery Inst., *Darwin, Design, and Public Education—New Book Examines the Scientific Evidence for Intelligent Design and Darwinism and Advocates Teaching Both to Improve Science Education*, <http://www.discovery.org/scripts/viewDB/index.php?command=view&id=1694> (Jan. 8, 2004).

78. Palm Beach A. U., *Guiding Principles*, <http://www.pba.edu/aboutpba/pbadifference/guiding-principles.cfm> (accessed Mar. 27, 2007); Palm Beach A. U., *Faculty Pre-Employment Questionnaire*, <http://www.pba.edu/aboutpba/administrativeoffices/human-resources/faculty-positions.cfm> (accessed Mar. 27, 2007).

79. Downey, *supra* n. 75.

80. Max Blumenthal, *Salon.com*, *Avenging Angel of the Religious Right*, <http://archive.salon.com/news/feature/2004/01/06/ahmanson/print.html> (Jan. 6, 2004); Walter Olson, *Invitation to a Stoning: Getting Cozy with Theocrats*, Reason Mag. (Nov. 1998) (available at <http://www.reason.com/news/shows/30789.html>); see also Chalcedon Found., *The Ministry of Chalcedon*, <http://www.chalcedon.edu/ministry.php> (accessed Feb. 13, 2007).

81. Peter Slevin, *Battle on Teaching Evolution Sharpens*, Wash. Post A1 (Mar. 14, 2005); Discovery Inst., *Fellows*, *supra* n. 73.

82. Larry Witham, *Contesting Science's Anti-Religious Bias: Seattle Institute's Scholars Promote "Intelligent Design" Theory of Universe*, Wash. Times A2 (Dec. 29, 1999); Downey, *supra* n. 75.

win was about a metaphysical view of the world.”<sup>83</sup> Another DI donor, the Henry P. and Susan C. Crowell Trust, states its mission as “[t]he teaching and active extension of the doctrines of Evangelical Christianity through approved grants to qualified organizations,”<sup>84</sup> while the Stewardship Foundation, which gave DI more than \$1 million between 1999 and 2003, states that it “provides resources to Christ-centered organizations that share their faith in Jesus Christ with people throughout the world.”<sup>85</sup>

Some DI donors, concerned about the DI’s primary focus on propaganda rather than hard-science research to back up ID’s scientific pretensions, have withdrawn their financial support. The Templeton Foundation, which funds a broad range of policy groups, reportedly asked DI officials to submit proposals for ID research.<sup>86</sup> “They never came in,” said Charles Harper, Jr., Templeton’s senior vice president.<sup>87</sup> “From the point of view of rigor and intellectual seriousness, the intelligent design people don’t come out very well in our world of scientific review.”<sup>88</sup>

At the risk of being accused of my own “swift-boating” of the DI and its CSC project, it seems relevant to note in this commentary that many—if not most—of DI’s individual and institutional donors are biblical creationists, for whom ID is, in effect, a more effective “wedge” to attack Darwinism than flat-out creationism. Unlike one of the DI authors, however, who has impugned both the professional ethics (“biased”) and competence (“sloppy”) of Judge Jones,<sup>89</sup> I base my critique of the DI authors’ *Kitzmiller* critique on the public statements of ID proponents. In this regard, it also seems relevant to note that the CSC’s director, Stephen Meyer, is a professed biblical creationist.<sup>90</sup> Perhaps only a few of the CSC’s Fellows are “young-earth” creationists—those who believe in a literal reading of the Genesis account of a six-day creation of the universe and who assert that the earth is only some

---

83. Postman, *supra* n. 3 at A1.

84. Crowell Trust, *Our Mission*, <http://www.crowelltrust.org/index.htm>. (Feb. 13, 2007); Jodi Wilgoren, *Politicized Scholars Put Evolution on the Defensive*, N.Y. Times A1 (Aug. 21, 2005).

85. Stewardship Found., *Mission Statement*, <http://www.stewardshipfdn.org/index.php?section=1> (accessed Feb. 13, 2007); Wilgoren, *supra* n. 84.

86. Laurie Goodstein, *Intelligent Design Might Be Meeting Its Maker*, N.Y. Times 41 (Dec. 4, 2005).

87. *Id.*

88. *Id.*

89. West, *Dover in Review*, pt. 4, *supra* n. 15.

90. *Supra*, nn. 77–78.

eight to ten thousand years old.<sup>91</sup> But I believe that the majority are “old-earth” creationists, willing to concede that cosmologists have correctly placed the universe’s age at fifteen to sixteen billion years.<sup>92</sup> Both groups, however, share a belief in “special creation,” the notion that God created humankind in his own image, distinct from all other animal species and with no “common descent” from other primates.<sup>93</sup>

From this shared perspective, both groups of DI creationists reject the Darwinian theory of natural selection and the evolution of humans from lower orders of primates. William Dembski, one of ID’s leading proponents and a DI Fellow, has stated that “I believe that God created the world with a purpose in mind . . . and that human beings were specially created.”<sup>94</sup> Jonathan Wells, a CSC Fellow whose book and DVD, *Icons of Evolution*, played a significant role in the *Kitzmiller* case (as will be discussed below),<sup>95</sup> has assumed “that the human species was planned before life began and that the history of life is the record of how this plan was implemented.”<sup>96</sup> Wells, a member of the Unification Church that is headed by the Reverend Sun Myung Moon (whom followers call “Father”)<sup>97</sup> has written that Moon “frequently criticized Darwin’s theory that living things originated without God’s purposeful, creative activity.”<sup>98</sup> Wells explained that he pursued a Ph.D. in molecular and cell biology at the University of California, Berkeley, because “Father’s words, my studies, and my prayers convinced me that I should devote my life to destroying Darwinism.”<sup>99</sup>

---

91. E.g. Ken Ham, *A Young Earth—It’s Not the Issue!* Answers in Genesis Mag. (Jan. 1998) (available at <http://www.answersingenesis.org/docs/1866.asp>) (“Believing in a relatively ‘young Earth’ (i.e., only a few thousands of years old, which we accept) is a *consequence* of accepting the authority of the Word of God as an infallible revelation from our omniscient Creator.”).

92. E.g. Answers in Creation, *Bringing the Bible and Science Together without Conflict*, <http://www.answersincreation.org/> (accessed Mar. 26, 2007) (“Did you know that you can be a conservative Christian, and believe that the earth is billions of years old?”).

93. E.g. Cassel, *supra* n. 57.

94. William A. Dembski, *What Every Theologian Should Know about Creation, Evolution and Design*, <http://www.leaderu.com/offices/dembski/docs/bd-theologn.html> (updated July 13, 2002, accessed Mar. 27, 2007).

95. *Infra* nn. 134–36 and accompanying text.

96. Jonathan Wells, *Evolution by Design*, “Reintroducing Design,” <http://www.tparents.org/Library/Unification/Talks/Wells/nat-select.htm> (accessed Mar. 27, 2007).

97. Peter Slevin, *In Kansas, a Sharp Debate on Evolution*, Wash. Post A1 (May 6, 2005).

98. Jonathan Wells, *Darwinism: Why I Went for a Second Ph.D.*, <http://www.tparents.org/Library/Unification/Talks/Wells/DARWIN.htm> (accessed Mar. 27, 2007).

99. *Id.*

It strains credulity—at least mine and that of Judge Jones—to believe that the supposed agnosticism of ID proponents such as Dembski and Wells about the identity of the “creator” is anything but a mask to conceal their creationist beliefs. Given the public statements of ID proponents, the claim that ID takes no stand on the question of whether the “intelligent designer” is natural or supernatural also strains credulity. The statements I have quoted above, none of which appears in the DI authors’ article, make such claims fatuous at best. In fact, all the expert witnesses who testified at the *Kitzmiller* trial for the Dover school board—including two scientists, biochemistry professor Michael Behe of Lehigh University and microbiologist Scott Minnich of the University of Idaho—conceded under cross-examination their beliefs in supernatural causation of humankind.<sup>100</sup> “It is notable,” Judge Jones wrote, “that not one defense expert was able to explain how the supernatural action suggested by ID could be anything other than an inherently religious proposition.”<sup>101</sup>

#### VI. THE REAL BACKGROUND OF THE *KITZMILLER* CASE: CREATIONISM MORPHS INTO ID

After reviewing “the voluminous record in this case,”<sup>102</sup> which included some six thousand pages of trial testimony and hundreds of exhibits, Judge Jones reached “the inescapable conclusion that ID is an interesting theological argument, but that it is not science.”<sup>103</sup> That conclusion strikes me as amply justified by the record before Judge Jones, although the DI authors disagree. Let me turn here to seventeen of the latter pages of that opinion, in which Judge Jones provided a detailed (and fascinating) chronology of the actions of Dover school board members and school officials that ultimately provoked eleven Dover parents to sue the board over its ID policy.<sup>104</sup> This is the stuff of made-for-TV movies, full of drama, intrigue, and emotion (Paramount Pictures had a representative at the trial, so another *Inherit the Wind*<sup>105</sup> might be coming). I will resist the temptation to reproduce in full Judge Jones’s narrative of these events, but I urge readers to consult

100. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 720 (M.D. Pa. 2005).

101. *Id.* at 721.

102. *Id.* at 745.

103. *Id.* at 745–46.

104. *Id.* at 747–63.

105. *Inherit the Wind* (United Artists 1960) (motion picture).

these sections of his opinion.<sup>106</sup> My chapter on the *Kitzmiller* case in *God on Trial* also recounts these events in more detail.<sup>107</sup>

In their article, the DI authors offer a brief and, in my view, misleading and self-serving account of the DI's involvement in the Dover controversy and the resulting *Kitzmiller* case.<sup>108</sup> They note that, between 2003 and 2005, the DI assigned its staff attorney, Seth Cooper, "the task of communicating with 'legislators, school board members, teachers, parents and students across the country'" to further the DI's goal to "address the topic of ID in a scientifically and educationally responsible way" in public schools.<sup>109</sup> Through the Internet, Cooper monitored news accounts of local and state controversies over evolution and ID. In the spring of 2004, as a result of reading a newspaper article,

Cooper learned about the Dover controversy . . . , and he then called Dover school board member William Buckingham, and warned him that the board was courting legal trouble if it "require[d] students to learn about creationism or [attempted] to censor the contemporary [presentation] of Darwin's theory or chemical origin of life scenarios."<sup>110</sup>

Who was Bill Buckingham, and why did Cooper call him out of the blue? What was this about teaching creationism in the Dover schools? And what, if anything, did Cooper tell Buckingham about ID as a better alternative to creationism in Dover's biology classes? The DI authors answer none of these significant questions in their article. Here are the facts. Bill Buckingham, a retired county prison supervisor and then-chair of the Dover board's curriculum committee, was an avowed "six-day" creationist.<sup>111</sup> Along with the board's president, Alan Bonsell, an auto-repair-shop owner and fellow "six-day" creationist,<sup>112</sup> Buckingham had been pushing the nine-member school board to include creation-

---

106. *Kitzmiller*, 400 F. Supp. 2d at 747–63. .

107. Irons, *God on Trial*, *supra* n. 24, at ch. 8.

108. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 9–14.

109. *Id.* at 10.

110. *Id.* (quoting Seth Cooper (brackets added by DeWolf et al.)).

111. Transcr. of Procs. Morn. Sess. at 22–23 (Oct. 27, 2005), *Kitzmiller*, 400 F. Supp. 2d 707.

Q: [C]reationism, you understand that to mean essentially the Book of Genesis?

A [Buckingham]: Pretty much, yes.

Q: And you personally believe in a literal reading of the Book of Genesis, isn't that right?

A [Buckingham]: Yes, I do.

*Id.* at 8.

112. Transcr. of Procs. Morn. Sess. at 86:18–23, 53:12–13, 71:2–6 (Oct. 31, 2006), *Kitzmiller*, 400 F. Supp. 2d 707.

ism in the Dover schools' biology classes.<sup>113</sup> Bonsell, elected to the board in 2001,<sup>114</sup> started the ball rolling at a board retreat in January 2002, when he mentioned "creationism" as his primary concern for the Dover schools.<sup>115</sup> Bonsell did nothing during the next year, however, to follow up this statement.<sup>116</sup>

By the time of the March 2003 board retreat, Bonsell was named chair of the curriculum committee<sup>117</sup> and told his fellow board members that creationism "belonged in biology class alongside evolution."<sup>118</sup> Shortly after this meeting, the Dover district's assistant superintendent, Mike Baksa, whose responsibilities included curriculum design,<sup>119</sup> informed Dover High School's science department chair, Bertha Spahr, that Bonsell was seeking "a 50/50 split" in biology classes between evolution and creationism.<sup>120</sup> Again, Bonsell did not push any farther during that school year.<sup>121</sup>

However, after his election to board president in 2004, Bonsell named Buckingham to chair the curriculum committee. Bonsell also served as an *ex officio* member of that committee.<sup>122</sup> The two men renewed their drive to include creationism in the biology curriculum, which came to a head at the June 7 and 14, 2004 board meetings. The board had earlier approved the purchase of several new science textbooks, including *Biology*, a widely used text whose primary author, Kenneth Miller, is a biology professor at Brown University.<sup>123</sup> At the June 7 board meeting, Buckingham moved for approval of all the science texts except the Miller book.<sup>124</sup> Questioned by a member of the audience about this, Buckingham replied that the Miller book was "laced with Darwinism," adding that "[i]t is inexcusable to have a book that says man descended from apes with nothing to counterbalance it."<sup>125</sup> At both the June 7 and 14 board meetings, Bonsell and Buckingham made repeated

---

113. Irons, *God on Trial*, *supra* n. 24, at 290–91.

114. *Id.* at 285–86.

115. *Kitzmiller*, 400 F. Supp. 2d at 748.

116. Irons, *God on Trial*, *supra* n. 24, at 286.

117. *Id.*

118. *Kitzmiller*, 400 F. Supp. 2d at 748.

119. Irons, *God on Trial*, *supra* n. 24, at 286.

120. *Kitzmiller*, 400 F. Supp. 2d at 748.

121. *Id.* at 747–48.

122. *Id.* at 747.

123. *Id.* at 750; Kenneth R. Miller & Joseph S. Levine, *Biology: Discovering Life* 161 (2d ed., D.C. Heath 1994).

124. *Kitzmiller*, 400 F. Supp. 2d at 751.

125. *Id.*



references to “creationism,” statements that were reported in the two daily newspapers in nearby York, Pennsylvania.<sup>126</sup>

#### VII. SETH COOPER AND BILL BUCKINGHAM: WHO SAID WHAT ABOUT ID?

One or more of the newspaper accounts of the Dover board meetings reached Seth Cooper via the Internet, and he called Buckingham from the DI’s office.<sup>127</sup> Cooper later explained that he made this initial call because “I hoped to steer the Dover Board away from trying to include intelligent design in the classroom or from trying to insert creationism into its curriculum [sic].”<sup>128</sup> The significance of Cooper’s statement is that he discussed ID with Buckingham as an alternative to creationism: this was most likely the first time Buckingham had ever heard the term “intelligent design.” From this point on, in fact, Buckingham dropped references to “creationism” at Dover school board and curriculum committee meetings and used the term “intelligent design” in its place.<sup>129</sup> Ironically, there might well have been no *Kitzmiller* case had Cooper not discussed ID with Buckingham. But, as Cooper later said, “[t]he ball was already rolling. Our greatest hope would have been that the Dover Board would have dropped the issue altogether. But on a more realistic level, we hoped they would at least choose a more modest and defensible approach. Unfortunately, they didn’t.”<sup>130</sup>

Cooper strenuously asserts that he consistently attempted to dissuade Buckingham and his board colleagues from including ID in the biology curriculum.<sup>131</sup> On this point, Buckingham’s recollection of his conversations with Cooper differs. After the *Kitzmiller* decision, Buckingham told a reporter that Cooper had initially been “enthusiastic and supportive” of efforts to include ID in the curriculum. “‘He’d call me to see if we were going to go forward,’ Buckingham said.” But then, with a lawsuit seemingly in-

126. *Id.* at 751–52; Christina Kauffman, *Dover School Chief Says He Doesn’t Recall Creationism Talk*, York Dispatch (Oct. 21, 2005) (available at [http://www.yorkdispatch.com/features/idesign/ci\\_3139184](http://www.yorkdispatch.com/features/idesign/ci_3139184)) (referring to *York Dispatch* and *York Daily Record* articles).

127. Seth Cooper, Discovery Inst., *Center for Science and Culture*, *Setting the York Daily Record Straight, Again*, [http://www.evolutionnews.org/2006/04/setting\\_the\\_york\\_daily\\_record.html](http://www.evolutionnews.org/2006/04/setting_the_york_daily_record.html) (Apr. 6, 2006) [hereinafter Cooper, *Setting Record Straight, Again*].

128. E-mail from Seth Cooper, Staff Atty., Discovery Inst., to Author, *Re: Dover Case* (Oct. 3, 2006) [hereinafter Cooper E-mail] (copy on file with *Montana Law Review*).

129. *Kitzmiller*, 400 F. Supp. 2d at 753.

130. Cooper E-mail, *supra* n. 128.

131. *Id.*

evitable if the Dover board adopted its ID policy, Cooper changed his tune.

“He was afraid we were going to lose the case,” Buckingham said. “And he thought, if we did lose the case, it was going to set intelligent design back for years. He just didn’t think we were the proper people to be pushing this at this time. . . . I think they thought we jumped their gun, so to speak.”<sup>132</sup>

Responding to Buckingham’s after-the-trial remarks, Cooper branded as “false” any suggestions that he had encouraged Buckingham to include ID in the biology curriculum.<sup>133</sup> However, two things are clear from these telephone conversations: Cooper did mention ID as an alternative to creationism, and he sent Buckingham the *Icons of Evolution* book and DVD that DI Fellow Jonathan Wells had written and produced.<sup>134</sup> Although Cooper notes that “[the *Icons* materials] did not include arguments for the theory of intelligent design,”<sup>135</sup> Buckingham most likely viewed them as supportive of the ID concept that Cooper had explained to him. At Buckingham’s insistence, the Dover High School biology teachers watched the DVD, although they declined to use it in their classes.<sup>136</sup>

#### VIII. ENTER THE THOMAS MORE LAW CENTER AND THE PANDAS BOOK

Seth Cooper made it clear to Bill Buckingham that the Discovery Institute was “a think-tank, not a public interest law firm . . . nor was legal representation ever part of its plans.”<sup>137</sup> But, perhaps unwittingly encouraged by Cooper, Buckingham pressed ahead with his campaign to include ID in the biology curriculum. He also knew from newspaper accounts of the board’s June 2004 meetings that Americans United for Separation of Church and State had threatened legal action if the board did adopt an ID policy.<sup>138</sup> Buckingham, in fact, seemed to welcome a legal challenge to the ID policy.

---

132. Lauri Lebo, *At Trial, Dover’s “Sacrificial Lamb”*, York Daily Rec. A1 (Mar. 26, 2006) (available at <http://w2.ydr.com/story/doverbiology/114646>).

133. Cooper, *Setting Record Straight, Again*, *supra* n. 127.

134. Jonathan Wells, *Icons of Evolution: Science or Myth? Why Much of What We Teach about Evolution Is Wrong* (Regnery Publ. 2000) (DVD based on book).

135. Cooper, *Setting Record Straight, Again*, *supra* n. 127.

136. Transc. of Procs. Afternoon Sess. 25–26 (Oct. 28, 2005), *Kitzmiller*, 400 F. Supp. 2d 707; Transc. of Procs. Morn. Sess. 16 (Oct. 28, 2005), *Kitzmiller*, 400 F. Supp. 2d 707.

137. Cooper E-mail, *supra* n. 128.

138. Transc. of Procs. Morn. Sess. at 41 (Oct. 28, 2005), *Kitzmiller*, 400 F. Supp. 2d 707.

Shortly after Seth Cooper made it clear that the DI would not offer legal help, Buckingham called Richard Thompson, general counsel of the Thomas More Law Center (TMLC), headquartered in Ann Arbor, Michigan.<sup>139</sup> Billing itself as the “sword and shield for people of faith,”<sup>140</sup> the TMLC proclaims its mission as “the defen[se] and promot[ion] of the religious freedom of Christians.”<sup>141</sup> Although the DI authors fault Thompson, who later served as lead counsel for the Dover school board in the *Kitzmiller* trial, because “the TMLC was in no position to represent the interests of the IDM,”<sup>142</sup> they say nothing of Thompson’s role in pointing Buckingham to the book, *Of Pandas and People: The Central Question of Biological Origins (Pandas)*.<sup>143</sup>

Thompson was more than happy to provide the legal support that Cooper had declined to offer the Dover board. During their initial conversation, Thompson also recommended that Buckingham obtain a copy of *Pandas*.<sup>144</sup> Buckingham promptly ordered the book over the Internet, and found it just what he wanted as a companion text to the Miller biology text that the board had still not approved for purchase.<sup>145</sup>

At this point, since it played a central role in the *Kitzmiller* trial and in Judge Jones’s opinion, more needs to be said about *Pandas*, its origins, and DI’s connection to it. Originally designed as a “creationist” biology text,<sup>146</sup> *Pandas* went through several drafts before it was published in 1989 by the Texas-based Foundation for Thought and Ethics (FTE), whose articles of incorporation stated that its “primary purpose is both religious and educational, which includes . . . proclaiming, publishing, preaching, teaching, promoting . . . and otherwise making known the Christian gospel and understanding of the Bible and the light it sheds on the academic and social issues of our day.”<sup>147</sup> Significantly, three DI Fellows (Stephen Meyer, Charles Thaxton, and Dean Kenyon) were

---

139. Cooper, *Setting Record Straight, Again*, *supra* n. 127.

140. Thomas More Law Ctr., *About Us*, <http://www.thomasmore.org/about.html> (accessed Mar. 27, 2007).

141. Thomas More Law Ctr., *Defending Religious Freedom*, <http://www.thomasmore.org/mission-defending.html> (accessed Mar. 27, 2007).

142. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 18.

143. Davis & Kenyon, *Pandas*, *supra* n. 37.

144. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 753–54 (M.D. Pa. 2005).

145. *Id.* at 754–55.

146. Expert Witness Rpt. Barbara Forrest at 18–19, 24, *Kitzmiller* 400 F. Supp. 2d 707.

147. Transcr. of Procs., Morn. Sess. at 90–91 (Oct. 5, 2006), *Kitzmiller* 400 F. Supp. 2d 707.

involved in the writing and editing of *Pandas*.<sup>148</sup> Kenyon, a biology professor at San Francisco State University, co-authored the book with Percival W. Davis.<sup>149</sup>

Notably, both Kenyon and Davis are admitted “young-earth” creationists. Kenyon has stated his belief that “[i]n the relatively recent past, 10,000 to 20,000 years ago, the entire cosmos was brought into existence out of nothing at all by supernatural creation.”<sup>150</sup> Davis, who had stated in an earlier book, *The Case for Creation*, that “[t]he Christian can present special creation as an alternative to the doctrine of organic evolution,”<sup>151</sup> teaches life science at Clearwater Christian College in Florida, where his course description states its basis in “the Biblical teaching of a literal six-day creation and a universal Flood for interpreting scientific data.”<sup>152</sup> In a 1994 interview with the *Wall Street Journal*, Davis was candid about the purpose of *Pandas*: “Of course my motives were religious. There’s no question about it.”<sup>153</sup>

There’s no question that *Pandas* was designed as a creationist text, for the religious motives that Davis has admitted. The DI authors claim, however, that the book had been purged of its original creationist content, and that “the removal of creationist terminology [from the published version] should have protected *Pandas*, not rendered the textbook unconstitutional.”<sup>154</sup> But they undermine their argument with the admission that “a definition of ‘creation’ from a pre-publication draft of *Pandas* . . . was also used as one definition of ID in the final published textbook.”<sup>155</sup> However, the DI authors only quote the definition that ID means that “various forms of life . . . began abruptly through an intelligent agency with their distinctive features intact—fish with fins and scales, birds with feathers, beaks, and wings, etc.”<sup>156</sup> The DI authors omit the definition in the pre-publication draft of *Pandas*

148. Davis & Kenyon, *Pandas*, *supra* n. 37; Discovery Inst., *Fellows*, *supra* n. 73.

149. Davis & Kenyon, *Pandas*, *supra* n. 37.

150. *Teacher of Bible Creation Theory Arouses Storm*, N.Y. Times A21 (Dec. 26, 1980).

151. Cassel, *supra* n. 57.

152. Clearwater Christian College, *Course Descriptions* 166, [http://www.clearwater.edu/academics/2006catalog/Course\\_Descriptions\\_06.pdf](http://www.clearwater.edu/academics/2006catalog/Course_Descriptions_06.pdf) (2006–2007).

153. Erik Larson, *Darwinian Struggle: Instead of Evolution, A Textbook Proposes “Intelligent Design”*—*Who Did the Designing It Doesn’t Say; Critics See Disguised Creationism—“Agent” Who Hath No Name*, Wall St. J. A1 (Nov. 14, 1994).

154. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 23.

155. *Id.* at 22; *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 721 (M.D. Pa. 2005).

156. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 22 (quoting *Kitzmiller*, 400 F. Supp. 2d at 721–22).

that read: “various forms of life began abruptly through the agency of an intelligent creator with their distinctive features already intact—fish with fins and scales, birds with feathers, beaks, and wings, etc.”<sup>157</sup>

What difference does it make that “intelligent creator” was changed to “intelligent agency”? The obvious point, which Judge Jones noted, was that the words “creation” and its cognates were removed from *Pandas* in some 150 places directly after the Supreme Court ruled in 1987 that public schools could not require “equal time” for “creation-science” in biology classes.<sup>158</sup> Although quite revealing of the quick-change strategy adopted by the *Pandas* authors to avoid the *Edwards* decision—which would have precluded the book’s adoption by any public-school district—the DI authors miss (or ignore) a more significant point that did not escape Judge Jones. Both the original “creationist” and revised “intelligent agency” definitions include the identical words that “the various forms of life that began abruptly . . . with their distinctive features already intact . . .”<sup>159</sup> These common definitions of the origin of species, Jones noted, were conceded by defense expert witnesses to mean the “‘special creation’ of kinds of animals, an inherently religious and creationist concept.”<sup>160</sup> The notion of “special creation” not only implies, but *requires* the intervention of a supernatural (read “God”) creator of all life forms. Whether labeled as an “intelligent creator” or an “intelligent agency” makes no difference. It is the supposed “intelligence” of the creator or agency that removes both old-fashioned creationism and new-fangled ID from the realm of science, since no “intelligent” force can be observed or measured by any scientific process.

Let me briefly address here (and hopefully quickly dispatch) the claim of the DI authors that “this language of ‘abrupt’ appearance of fully-formed biological structures simply represents a common observation of the fossil record, not a theological assertion.”<sup>161</sup> They cite and quote from the writings of two “prominent evolutionary biologists and paleontologists,” Stephen Jay Gould and Ernst Mayr, as making “[s]imilar observations” about the fos-

---

157. Supp. to Expert Witness Rpt. Barbara Forrest at 5–6, *Kitzmiller*, 400 F. Supp. 2d 707 (emphasis omitted).

158. *Edwards v. Aguillard*, 482 U.S. 578, 588 n. 7, 591 (1986); *Kitzmiller*, 400 F. Supp. 2d at 721–22 (citing *Edwards v. Aguillard*, 482 U.S. 578, 588 n. 7, 591 (1986)).

159. *Kitzmiller*, 400 F. Supp. 2d at 721–22.

160. *Id.* at 722.

161. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 22.

sil record.<sup>162</sup> The problem is that “abrupt” means two different things to creationists and to evolutionary biologists and paleontologists. To the former, “abrupt” means “instantaneous” creation by God, without any connection between various life forms.<sup>163</sup> To the latter, the “abrupt transitions” on which Gould based his theory of “punctuated equilibrium” can span “thousands or tens of thousands of years,” just an eye-blink in the earth’s age.<sup>164</sup>

#### IX. THE DI AUTHORS AND THE PERILS OF SELECTIVE QUOTATION

On a personal note, let me say a few words in defense of my old and dear friend, Stephen Jay Gould. Steve’s untimely death in 2002 robbed the world of a humane and witty person, whose encyclopedic knowledge spanned everything from baseball to music to paleontology. The DI authors, in quoting twenty words from Steve’s huge corpus of writing, have hijacked his name to serve their narrow and defensive purposes. Steve did write, as they quote, that “[t]he fossil record contains precious little in the way of intermediate forms; transitions between major groups are characteristically abrupt.”<sup>165</sup>

Writing of his theory of “punctuated equilibrium,” which suggested periods of “abrupt transition” between major biological groups, followed by periods of “stasis” or slow evolutionary change,<sup>166</sup> Steve noted that

the process of speciation takes thousands or tens of thousands of years. This amount of time, so long when measured against our lives, is a geological microsecond. It represents much less than 1 per cent of the average life-span for a fossil invertebrate species—more than ten million years. Large, widespread, and well established species, on the other hand, are not expected to change very much. We believe that the inertia of large populations explains the stasis of most fossil species over millions of years.<sup>167</sup>

Writing about creationists at a time when ID theory was still in diapers, Steve admitted that “it is infuriating to be quoted again and again by creationists—whether through design or stu-

162. *Id.* at 22–23.

163. *Amicus Curiae Br. of 72 Nobel Laureates, 17 St. Acads. of Sci., & 7 Other Sci. Orgs., Edwards*, 482 U.S. 578.

164. *Id.*; see also Stephen Jay Gould, *Hen’s Teeth and Horse’s Toes* 259 (W.W. Norton & Co. 1983) [hereinafter Gould, *Hen’s Teeth*].

165. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 23 n. 96 (quoting Stephen Jay Gould, *This View of Life: The Return of Hopeful Monsters*, 86 *Nat. History* 22, 24 (June–July 1977)).

166. Gould, *Hen’s Teeth*, *supra* n. 164.

167. *Id.* at 259–60.

pidity, I do not know—as admitting that the fossil record includes no transitional forms. Transitional forms are generally lacking at the species level, but they are abundant between larger groups.”<sup>168</sup> He cited the human species as the best example: “what better transitional form could we expect to find than the oldest human, *Australopithecus afarensis*, with its apelike palate, its human upright stance, and a cranial capacity larger than any ape’s of the same body size but a full 1,000 cubic centimeters below ours?”<sup>169</sup> He confronted the “special creationists” head-on: “If God made each of the half-dozen human species discovered in ancient rocks, why did he create in an unbroken temporal sequence of progressively more modern features—increasing cranial capacity, reduced face and teeth, larger body size? Did he create to mimic evolution and test our faith thereby?”<sup>170</sup> There was no doubt in Steve’s mind that “human beings evolved from apelike ancestors, whether they did so by Darwin’s proposed mechanism or by some other, yet to be discovered.”<sup>171</sup> And such a mechanism could not be creationism or its lineal descendent, ID. By their selective and misleading quotation from Steve’s work, the DI authors fully justify, in my opinion, the scorn Steve would have heaped on them had he lived to read their article.

It strikes me as worth noting that not one of the current forty-one Fellows in the Center for Science and Culture has a degree in paleontology; those with any scientific credentials come largely from the fields of chemistry, engineering, mathematics, and biology.<sup>172</sup> Judge Jones, in fact, noted that no ID proponents have any “paleontology expertise” or have published anything “on paleontology or the fossil record.”<sup>173</sup> There is an obvious reason for this fact. Paleontologists (like Steve Gould) who study the fossil record of the hominids have found a progression of characteristics (jaws, limbs, skulls, etc.) that inevitably lead to the conclusion that the human species evolved from earlier hominids. Creationists (and their ID descendents) cannot square this conclusion with their belief in “special creation” of humankind.

---

168. *Id.* at 260.

169. *Id.* at 259.

170. *Id.*

171. *Id.* at 254.

172. Discovery Inst., *Center for Science and Culture, About CSC*, <http://www.discovery.org/csc/aboutCSC.php> (accessed Feb. 19, 2007).

173. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 743 n. 15 (M.D. Pa. 2005).

## X. RED HERRINGS AND NIT-PICKING

The DI authors devote more than half of their article to complaints about Judge Jones's opinion that strike me as red herrings and nit-picking. Let me identify a few of these complaints and answer them, with the help of Judge Jones.

First, the DI authors complain that Judge Jones ignored the arguments presented to him in the amicus curiae briefs submitted by the DI and the Foundation for Thought and Ethics. "There is no evidence from the text of Judge Jones's opinion," they assert, "that he ever considered the arguments made in either brief."<sup>174</sup> Not true. Judge Jones wrote that he had "taken under consideration" these briefs.<sup>175</sup> That he did not quote from them in his opinion does not mean that he had not "considered" them, but rather suggests that he found their arguments unpersuasive or duplicative of trial testimony and exhibits.

Second, the DI authors complain that Judge Jones employed a "double standard" in scrutinizing the religious motivations of ID proponents relevant to his finding that ID reflects an inherently religious view, while ignoring the "anti-religious" views of evolutionists.<sup>176</sup> The DI authors quote the statement of Richard Dawkins, a prominent (and outspoken) critic of ID, that "Darwin made it possible to become an intellectually fulfilled atheist."<sup>177</sup> Notwithstanding his professed atheism, however, Dawkins (and other "atheist evolutionists") did not ground his belief in evolution on atheism; his views on religion did not precede his views on evolution, but followed them. In other words, Dawkins does not say, "I am an atheist, therefore I believe in evolution." He puts it the other way around: "I believe in evolution, therefore I am an atheist." In contrast, the beliefs in Christian theology that most ID proponents share are grounded in, and precede, the opposition to evolution they express. For example, William Dembski has written that "[t]he conceptual soundness of the [ID] theory can in the end only be located in Christ."<sup>178</sup> In other words, Dembski seems to say, "I am a Christian, therefore I reject evolution." He does not say, "I reject evolution, therefore I am a Christian."

---

174. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 13.

175. *Kitzmiller*, 400 F. Supp. 2d at 711 n. 3.

176. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 51.

177. *Id.* at 44 (quoting Richard Dawkins, *The Blind Watchmaker: Why the Evidence of Evolution Reveals a Universe without Design* 6 (W.W. Norton & Co. 1986)).

178. William A. Dembski, *Intelligent Design: The Bridge between Science & Theology* 210 (InterVarsity Press 1999).



There is a world of difference between these two positions, as Judge Jones recognized.

Let me do a little nit-picking of my own. The DI authors assert that “Judge Jones traced the origins of ID back to the . . . arguments of the thirteenth century Catholic philosopher Thomas Aquinas. . . . [He] presented a sharply truncated view of intellectual history. The debate over design in nature actually reaches back to the ancient Greek and Roman philosophers.”<sup>179</sup> Not true. Judge Jones, citing the trial testimony of noted Catholic theologian Professor John Haught, wrote that Haught traced the “old religious argument [for design in nature] . . . back to *at least* Thomas Aquinas in the 13th century.”<sup>180</sup> During his testimony, Professor Haught discussed the views of Greek and Roman philosophers, but Judge Jones felt no obligation to review this testimony in his opinion. A minor point, perhaps, but telling in the selective reading of the trial record by the DI authors.

There is a curious disconnect between the DI authors’ complaint that Judge Jones failed to acknowledge the ancient roots of ID in the writings of Plato,<sup>181</sup> and their complaint that he dismissed ID because, as the DI’s amicus brief argued, “[i]t is a relatively young scientific theory, based upon relatively new scientific data.”<sup>182</sup> What happened, of course, between the time of Socrates and the *Kitzmiller* trial, was that ID proponents dropped the old “God is the designer” argument in order to evade the *Edwards* decision and its proscription of teaching creationism in public schools.<sup>183</sup> Judge Jones recognized this ploy as the evasive tactic it was, citing Professor Haught’s testimony—as Judge Jones summarized it—that “anyone familiar with Western religious thought would immediately make the association that the tactically unnamed designer [in ID theory] is God.”<sup>184</sup> In other words, you can’t eat your cake and have it too.

## XI. TRAIPSING INTO BIOCHEMISTRY

Readers of the DI authors’ article may be (understandably) puzzled by their discussion of the “bacterial flagellum” and the

---

179. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 19 (footnote omitted).

180. *Kitzmiller*, 400 F. Supp. 2d at 718 (emphasis added).

181. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 19 n. 73.

182. *Id.* at 38.

183. See Section IV, *supra*.

184. *Kitzmiller*, 400 F. Supp. 2d at 718.

“Type-III Secretary System.”<sup>185</sup> What does this have to do with ninth-grade biology classes at Dover High School, in which these graduate-level terms are unlikely to be discussed? The answer lies in the claim of the Dover school board’s lead scientific expert witness, biochemist Michael Behe, that the bacterial flagellum—a sort of propeller on the outboard motor that propels bacteria—demonstrates the “irreducible complexity” of living organisms that cannot be explained by Darwinian evolution.<sup>186</sup> Judge Jones quoted Behe on this issue:

By irreducibly complex I mean a system which is composed of several well-matched, interacting parts that contribute to the basic function, wherein the removal of any one of the parts causes the system to effectively cease functioning. An irreducibly complex system cannot be produced directly by slight, successive modifications of a precursor system, because any precursor to an irreducibly complex system that is missing a part is by definition nonfunctional.<sup>187</sup>

For those without degrees in biochemistry—which includes the DI authors and me—this may seem totally esoteric. But the concept of “irreducible complexity” is, in fact, the linchpin on which ID theory depends for its claims of scientific legitimacy. If any part of an organism cannot be removed without making it nonfunctional, Behe claims, and the part has no identifiable “precursor” in any other form, Darwin’s theory of natural selection is proven wrong, leaving ID as the only possible alternative. The problem for the DI authors is that the *Kitzmiller* plaintiffs’ lead scientific witness, biochemist Kenneth Miller “identified a possible precursor to the bacterial flagellum, a subsystem that was fully functional, namely the Type-III Secretary System.”<sup>188</sup> Note that Miller, as a good scientist, said “possible” and not “proven,” while Behe bets the farm on the bacterial flagellum for his ID claims. Note also that Behe, under cross-examination at trial, admitted “a defect in his view of irreducible complexity” because it focuses on “removing a part from an already-functioning system” rather than on explaining the process—as evolutionary biologists attempt to do—of “bring[ing] together components to make a new system in the first place.”<sup>189</sup> Raising his judicial eyebrows, Judge Jones noted that, despite Behe’s promise to “repair this defect in future work” . . . he has failed to do so even four years after elucidating

---

185. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 35–36.

186. *Kitzmiller*, 400 F. Supp. 2d at 739.

187. *Id.*

188. *Id.* at 740.

189. *Id.* at 739.

this defect.”<sup>190</sup> None of the quotations above, I might add, appear in the DI authors’ article.

## XII. PEER-REVIEWED PUBLICATIONS AND RESEARCH

The DI authors complain that Judge Jones wrongly held that ID “has not generated peer-reviewed publications” and has not “been the subject of testing and research.”<sup>191</sup> This is an odd complaint, since the DI authors in their *Traipsing* book allege the “significant weaknesses” of the peer-review process for scientific publications, including “peer-reviewers with predictable prejudices.”<sup>192</sup> Nonetheless, they cite the trial testimony of DI Fellow Scott Minnich that there were between “seven and ten” peer-reviewed publications supporting ID.<sup>193</sup> The DI Web site lists more than twenty publications in supposedly peer-reviewed science journals and books supportive of ID.<sup>194</sup> The problem is that most of these are “review” articles that discuss other people’s work and publications, and are based on no original laboratory or field research; the articles simply assert that ID is a better explanation for the results of this earlier work than evolutionary theory. The pro-ID authors of these review articles conduct no research of their own that provides scientific support for ID. The best witness on this point is Michael Behe, the lead expert witness for the Dover board at the *Kitzmiller* trial, who agreed under cross-examination that “[t]here are no peer reviewed articles by anyone advocating for intelligent design supported by pertinent experiments or calculations which provide detailed rigorous accounts of how intelligent design of any biological system occurred.”<sup>195</sup>

My own review (admittedly by a non-scientist) of the abstracts of publications referenced as “peer-reviewed” on the DI Web site located just one that was arguably based on original lab-

---

190. *Id.*

191. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 38, 41.

192. DeWolf et al., *Traipsing*, *supra* n. 26, at 54.

193. *Id.* at 53.

194. Discovery Inst., *Center for Science and Culture, Peer-Reviewed & Edited Scientific Publications Supporting the Theory of Intelligent Design (Annotated)*, <http://www.discovery.org/scripts/viewDB/index.php?command=view&id=2640> (accessed Feb. 13, 2007); *see e.g.* Stephen C. Meyer, *DNA and the Origin of Life: Information, Specification, and Explanation* (Mich. St. U. Press 2003) (available at <http://www.discovery.org/scripts/viewDB/filesDB-download.php?command=download&id=1026>).

195. *Kitzmiller*, 400 F. Supp. 2d at 745.

oratory or field research—the article in *Protein Science*<sup>196</sup> by Behe and David Snoke (actually based on computerized models) that Judge Jones dismissed because it “does not mention either irreducible complexity or ID.”<sup>197</sup> The DI authors fault the judge for this dismissal, but fail to quote his comment that Behe “admitted that the study which forms the basis for the article did not rule out many known evolutionary mechanisms and that the research might actually support evolutionary pathways if a biologically realistic population size were used.”<sup>198</sup> The old advertising slogan “where’s the beef?” seems particularly apt in viewing the paucity of scientific research on the part of ID proponents.

### XIII. WRONG CASE, WRONG PLACE, WRONG TIME

I quoted above the impressions of Dover school board member Bill Buckingham, based on his conversations with DI attorney Seth Cooper, that Cooper “didn’t think we were the proper people to be pushing this at this time” and that “we jumped their gun, so to speak.”<sup>199</sup> Whether or not Buckingham accurately recalled these conversations, Cooper clearly tried hard to convince the Dover board to withdraw its ID policy in the face of certain litigation to challenge it. However, these ultimately futile efforts do not mean that the DI opposed the teaching of ID in public schools or use of the *Pandas* book. In fact, one of the DI authors, David DeWolf, wrote in 1999 (in a booklet published by the Foundation for Thought and Ethics) that “[s]chool boards have the authority to permit, and *even encourage*, teaching about design theory as an alternative to Darwinian evolution—and this includes use of textbooks such as *Of Pandas and People* that present evidence for the theory of intelligent design.”<sup>200</sup>

What the Dover board did in 2004, in adopting its ID policy and placing the *Pandas* book in its classrooms, was precisely what DeWolf had said would be constitutionally permissible. So what prompted Seth Cooper to warn Buckingham that “we were going

---

196. Michael J. Behe & David W. Snoke, *Simulating Evolution by Gene Duplication of Protein Features that Require Multiple Amino Acid Residues*, 13 *Protein Sci.* 2651 (2004) (available at <http://www.proteinscience.org/cgi/reprint/ps.04802904v1>).

197. *Kitzmiller*, 400 F. Supp. 2d at 745 n. 17.

198. *Id.*

199. Lebo, *supra* n. 132.

200. David K. DeWolf, Stephen C. Meyer & Mark E. DeForrest, *Teaching the Controversy: Darwinism, Design and the Public School Science Curriculum* (Found. for Thought & Ethics 1999) [hereinafter DeWolf et al., *Teaching the Controversy*].

to lose the case . . . [and] set intelligent design back for years”<sup>201</sup> Most likely, in my view, Cooper recognized that professed “six-day” creationists such as Buckingham would not make the most credible advocates of ID on the witness stand. In fact, Judge Jones noted the “striking ignorance” of Buckingham and his fellow board members about ID, and that their trial testimony indicated that “they had utterly no grasp of ID.”<sup>202</sup> In this regard, the admission of the DI authors that Buckingham and his colleagues made a “poor impression” on Judge Jones takes a prize for rueful understatement.<sup>203</sup>

The DI, as DeWolf has written, has no objection to “encourag[ing]” school boards to promote the teaching of ID in science classes and to adopt the *Pandas* book as a text.<sup>204</sup> However, to the DI’s chagrin, the *Kitzmiller* case became a “disaster” from which the DI (and the ID movement) may never recover. That fact, admitted by the DI’s president,<sup>205</sup> strikes me as the most likely explanation for the DI’s “swift-boating” of Judge Jones.

#### XIV. CONCLUSION

After some closing potshots at Judge Jones in their conclusion, the DI authors turn their fire on “Darwin’s defenders” who, they claim, “are trying to ban any public expression of dissent from Darwinian theory.”<sup>206</sup> Evoking shades of McCarthyism, they cite examples of “discrimination and intimidation” of three academic critics of evolution: Caroline Crocker of George Mason University (GMU), Richard Sternberg of the Smithsonian Institution, and Nancy Bryson of the Mississippi University for Women (MUW). Crocker was allegedly suspended from teaching her GMU class in cell biology for favorably mentioning ID; Sternberg supposedly “faced retaliation” from Smithsonian officials for having accepted for publication in the *Proceedings of the Biological Society of Washington* an article by the DI’s director, Stephen Meyer; and Bryson was “removed as head of the division of natural sciences” at the MUW for “merely presenting scientific criticisms” of evolution to an honors class.<sup>207</sup> There are, however,

---

201. Lebo, *supra* n. 132.

202. *Kitzmiller*, 400 F. Supp. 2d at 758–59.

203. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 13.

204. DeWolf et al., *Teaching the Controversy*, *supra* n. 200.

205. *Supra* n. 5 and accompanying text.

206. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 55.

207. DeWolf et al., *Intelligent Design*, *supra* n. 1, at 56.

highly conflicting accounts of these episodes, casting doubt on the DI authors' charges of academic McCarthyism, to which I refer readers with any interest in them.<sup>208</sup> None of these people, I might add, lost their jobs for challenging evolution; wide-scale purges of pro-ID teachers have not happened. But the DI authors' charges in these cases, in my view, have nothing to do with their blistering critique of Judge Jones's opinion in the *Kitzmiller* case. They simply reflect an effort to portray ID proponents as victims of a new Inquisition, or a modern-day version of the Salem witch trials.

In the end, I suspect, neither the preceding article nor this commentary on it will sway any minds that are already made up on this issue, on one side or the other. For those readers who remain undecided, if there be any, let me once again urge a careful reading of Judge Jones's opinion. It is, in my view, a masterful distillation and analysis of thousands of pages of trial testimony, hundreds of exhibits, and dozens of pleadings. We can ask no more of a judge who must deal with such a controversial issue. The *Kitzmiller* opinion is neither biased nor sloppy, and will easily withstand the assaults the DI authors have launched against it.

---

208. On Crocker, see Shankar Vedantum, *Eden and Evolution*, Wash. Post Mag. 8 (Feb. 5, 2006); on Sternberg, see Michael Powell, *Editor Explains Reasons for "Intelligent Design" Article*, Wash. Post A19 (Aug. 19, 2005); on Bryson, see Chris Jenkins, *Evolution Battle on Campus*, 300 Science 247 (2003) (summary available at <http://www.sciencemag.org/cgi/content/summary/300/5617/247a>).

