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“Norman Geisler has provided a compilation and commentary on the issue of evolution, public education, and the courts that will serve as an important resource for decades to come. Dr. Geisler convincingly shows that much of the debate over this issue is a jurisprudential mess resulting from philosophically confused though well-meaning scientists and jurists. He offers just the sort of clarity this debate requires.”

—**Francis J. Beckwith,**
Associate Professor of Church-State Studies, Baylor University,
and author of *Law, Darwinism, and Public Education*

Creation & the Courts

Eighty Years of Conflict
in the Classroom and the Courtroom

With Never Before Published Testimony from the "Scopes II" Trial

Norman L. Geisler

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Foreword

Duane T. Gish¹

No one is better prepared than Dr. Norman Geisler to write an account of the Arkansas creation/evolution trial of 1981. Geisler was not only present during the trial; he was the lead witness for the creationist side and one of its most brilliant witnesses. His testimony, in my view (I was present during the entire trial), effectively demolished the most important thrust of the case by the ACLU. Unfortunately, in my opinion, no testimony, and no effort by any team of lawyers, no matter how brilliant, could have won the case for the creationist side. Judge Overton accepted the ACLU mind-set that anything that hints of God, even scientific evidence for creation, must be barred from public schools. Secular humanism will be our official state-sanctioned religion, if Judge Overton's decision is allowed to stand.

Geisler's account of the trial (see chapter 3) is carefully and thoroughly documented. His description of the actual course of the trial is interesting, and his critique of Judge Overton's official decision is incisive,

1. Dr. Gish, a leading scientist defender of creation, was present for the entire 1981 "Scopes II" trial in Arkansas. He was an expert advisor to the defense and is a noted author and debater on behalf of scientific creationism. With only minor editing, this is the foreword he wrote for *The Creator in the Courtroom* (Norman L. Geisler with A. F. Brooke II and Mark J. Keough [Milford, Mich.: Mott Media, 1982]).

thorough, and accurate. Geisler's account is in refreshing contrast to the usually (though not always) distorted and biased accounts that appeared in the mass media and a relief from the sophistry that appeared in so many scientific journals. No eyewitness account can be accurate in all details, but I can certainly recommend this book's fair and thorough account of the famous 1981 Arkansas creation/evolution trial.

Preface

Wayne Frair¹

Geisler on the Stand

In *McLean v. Arkansas Board of Education* (1982) the court considered an Arkansas statute that required balanced teaching of *both* evolution and creation when the subject of origins was discussed. After a two-week trial, December 7–17, 1981, the court ruled on January 5, 1982 that the statute was unconstitutional because it essentially would promote a biblical religious view. This Arkansas statute was a forerunner of the subsequent one in the state of Louisiana.

The December 1981 trial effectively was a travesty of justice, as is made clear in the only book by a person who was there for the entire trial (Norman Geisler, *The Creator in the Courtroom*, 1982). The federal court judge, William Overton, was from the start biased against the defense.

I personally arrived in the courtroom on Friday, December 11, the final of five days of testimony by the plaintiffs, who were represented

1. Dr. Frair was present at the Arkansas *McLean* trial (1981–1982). He was an expert witness who spoke in favor of teaching both evolution and creation. Dr. Frair is a longtime science teacher, author, member of the prestigious American Association for the Advancement of Science, and a world-renowned expert on turtles.

by the American Civil Liberties Union (ACLU). The first witness for the defense, Dr. Geisler, was on the witness stand in the afternoon of December 11. At that time I was sitting next to Dr. Duane Gish, who was known as a leading creationist and an unexcelled debater in the modern creationist movement.² Geisler's presentation was superb (see chapter 4), and at its end Gish was absolutely exuberant (see foreword). In no uncertain words he declared to me that Geisler successfully had demolished every one of the arguments presented by ACLU witnesses during their preceding five days of testimony.

Then in the cross-examination (see appendix 4), ACLU lawyer Anthony Siano began to mock Dr. Geisler based not on his court testimony but rather on some comments dealing with spaceships that Geisler had made in a pretrial deposition. Geisler tried in vain to be straightforward and honest as the cunning lawyer goaded him with superfluous mockery—a pitiful miscarriage of justice that was not opposed by Judge Overton.

My Testimony

On the following Monday I had the opportunity to be on the witness stand for about one and a half hours. Coverage of my testimony is given in chapter 7 of *The Creator in the Courtroom*. I said that Arkansas was “on the very cutting edge of an educational movement” that would improve the quality of U.S. education. Without hesitation I added that if Charles Darwin were alive today he would be a creationist. I backed up that statement with quotations from L. S. Berg, A. H. Clark, H. Nilsson, G. A. Kerkut, and S. Lovtrup. These date back to the 1920s.

The final material I used was from the famous British paleontologist Colin Patterson, who had spoken about a month earlier (November 5, 1981) in New York City at the American Museum of Natural History (AMNH). Patterson had expressed strong feelings against evolution, and I quoted from his talk. The ACLU lawyer objected, but fortunately

2. See Marvin L. Lubenow, *From Fish to Gish* (San Diego, Calif.: Creation-Life, 1983).

Judge Overton overruled because I had been there for that AMNH presentation.

I felt that my testimony would have a positive impact for truth in opposition to what had been heard from the plaintiffs and their witnesses. They all had been coached thoroughly to stress two issues. These were (1) there is no science supporting a creation position, and (2) creation is religion, which should not be intruded into science. They said this repeatedly, even though the Arkansas law at issue in the trial prohibited religious instruction and clearly defines “creation science” as “the scientific evidences for creation and inferences from these scientific evidences.”

Newspapers and magazines across the country thrived on articles about the trial—some very fair and others misleading (see appendices 1 and 2). A generally quite accurate newspaper coverage of the whole trial was written by reporter Cal Beisner and appeared in the weekly *Pea Ridge (Arkansas) County Times*, Wednesday, December 30, 1981. One very biased and inaccurate report was written by Roger Lewin and was published in the January 8, 1982 issue of *Science*,³ arguably the world’s leading weekly publication of scientific information. A major portion of the report was a gross misrepresentation of my testimony. After reading Lewin’s article I wrote a letter to the magazine, from which I quote:

Roger Lewin’s treatment (*Science* 215:142) . . . of the Little Rock creation trial falls somewhat short of the quality of reporting I would consider the readers of *Science* should expect. . . .

My presentation until cross-examination emphasized scientific data; and among other things I endeavored to make clear that from literature dating back into the 1920’s and up to the present time there is a body of information published by respected scientists who have theorized and speculated in ways more consistent with a creation model than a macroevolutionary model. A Russian book, *Nomogenesis or Evolution Determined by Law* by Leo S. Berg (original edition 1922), was republished by Massachusetts Institute of Technology Press in 1969. The [foreword] to the recent edition was written by Theodosius Dob-

3. Roger Lewin, “Where Is the Science in Creation Science?” *Science* 215 (January 8, 1982): 141-146.

zhansky, who described Berg as “one of the outstanding intellects among Russian scientists” and further that “the depth as well as the amplitude of his scholarship were remarkable.” (p. xi) In this 477-page book Berg demonstrates that living things have developed polyphyletically.

There have been other scientific (and “non-religious”) writings including [British] Kerkut’s *Implications of Evolution*, Pergamon Press, 1960, which have cast doubt upon a monophyletic model. I quoted from this book at the trial because much of what Kerkut says currently is very pertinent. For instance:

Most students become acquainted with many of the current concepts in biology whilst still at school and at an age when most people are, on the whole, uncritical. Then when they come to study the subject in more detail they have in their minds several half-truths and misconceptions which tend to prevent them from coming to a fresh appraisal of the situation. In addition, with a uniform pattern of education most students tend to have the same sort of educational background and so in conversation and discussion they accept common fallacies and agree on matters based on these fallacies.

It would seem a good principle to encourage the study of “scientific heresies.” There is always the danger that a reader might be seduced by one of these heresies but the danger is neither as great nor as serious as the danger of having scientists brought up in a type of mental strait-jacket or of taking them so quickly through a subject that they have no time to analyze and digest the material they have “studied.” A careful perusal of the heresies will also indicate the facts in favour of the currently accepted doctrines, and if the evidence against a theory is overwhelming and if there is no other satisfactory theory to take its place we shall just have to say that we do not yet know the answer.

There is a theory which states that many living animals can be observed over the course of time to undergo changes so that new species are formed. This can be called the “Special Theory of Evolution” and can be demonstrated in certain cases by experiments. On the other hand there is the theory that all the living forms in the world have arisen from a single source which itself came from an inorganic form. This theory can be called the “General Theory

of Evolution” and the evidence that supports it is not sufficiently strong to allow us to consider it as anything more than a working hypothesis. It is not clear whether the changes that bring about speciation are of the same nature as those that brought about the development of new phyla. The answer will be found by future experimental work and not by dogmatic assertions that the General Theory of Evolution must be correct because there is nothing else that will satisfactorily take its place. (156–157).

It certainly is true that there are differences of opinion among creationists as there are among evolutionists, but both creation and evolution models can be presented in a broad sense within biology classes without this being a “religious” exercise. Neither evolutionists nor creationists need be paranoid regarding this issue, but we should realize that in our country we enjoy freedom *of* religion, not freedom *from* religion.

The causes of science education will not be served well by name-calling and misrepresentation or distortion of the ideas being presented by those with whom we disagree. It is true that most scientists today believe that macroevolution is a well-established concept; however, for improving scholarship and understanding, especially those promoting only macroevolution probably will profit from perceptively heeding what responsible creationists are trying to say.

The editors of *Science* did not print any portion of my letter or even acknowledge having received it. Their published write-up of my testimony at the Arkansas trial was so inaccurate that I wondered if the author, Roger Lewin, even was in the courtroom when I gave testimony.

I had written the letter to *Science* rather quickly and soon realized that there was a lot more I could have said; so I composed the following to present a more accurate account of what I actually had said during the trial:

I have been researching in biochemical taxonomy of reptiles since 1960, and did discuss some of my research from the witness stand. This write-up mentions three books which were earlier ones referred to; however I also quoted from a 1960 book, a 1969 book and other literature reaching into

the 70's. These authors basically did not just have some misgivings about some aspects of evolutionary theory, they had serious objections.

My own studies on erythrocyte size indicated that an evolutionary progression is anything but obvious from the facts. Blood cells have not become smaller as animals have climbed the evolutionary tree because the largest cells are found among amphibians and some birds have larger cells than some fish.

With regard to the matter of my stating that considerable progress has been made in past decades, this is completely obvious. In my cross-examination ACLU lawyer Bruce Ennis mentioned in a somewhat casual way several fields of endeavor; and he said: "Haven't we made progress in these?" The answer was obviously, "Yes;" and I was not thinking of myself in an adversarial relationship to the lawyer at this point. I recognize now that I should have showed how in these fields the evidence has pointed more toward a creationist position than a macroevolutionary one. For instance, genetic drift. Genetic drift does not help in understanding macroevolution. It is one of their problems, because it runs counter to what would be anticipated on the basis of natural selection. . . . So what to me was an extremely minor concession to this lawyer has been made to look as though it were a big concession on my part.

During my testimony I indeed stressed the "limited change model"; and I referred to the natural groups which are found in nature. Act 590 used the term "kinds". This concept, by the way, is not a new one because it was commonly held 150 years ago. In fact, a recent book (Pitman, Michael. *Adam And Evolution*. Grand Rapids, MI: Baker Book House: 1984) presents nature as consisting of archetypes, which was the term used more than a century ago.

The question about the number of these "kinds" is a very good one. At present we do not know. I would estimate perhaps somewhere in the vicinity of 8,000. It is not easy to be concrete regarding "kinds" any more than it is for systematists to give a definition of any of the taxonomic categories other than species. One cannot readily define an order except in relation to class and family; and I tried to make this clear to the court. Our taxonomic schemes are human inventions; they are not rigid, but they are practical. A scientist who understands taxonomy is not deeply concerned about having precise definitions for his categories. The same holds for the "kinds" concept.

As a matter of fact, I did define “kind” in terms of reproduction, which is at least a partially acceptable definition. If organisms can reproduce hybrids, they may be considered to belong to the same kind. (See Lester, Lane P., Bohlin, Raymond G. *The Natural Limits to Biological Change*. Grand Rapids, MI: Zondervan Publishing House, 1984.) My current opinion, which was established after my research reported in 1985 (Frair, Wayne. “Biochemical evidence for the origin and dispersion of turtles.” *Proceedings of the 11th Bible-Science Association National Conference*; 1985 August 14-16; Cleveland, OH. Harley Hotel: 97-105; and Frair, Wayne. “The enigmatic plateless river turtle, *Carettochelys*, in serological survey.” *J. Herpetology*. 19(4):515–523: 1985), is that turtles represent a single kind. . . .

Next, the matter of the “ancestry” for man and apes. Lawyer Ennis referred to a quotation in our book from theologian Leupold; and he tried to make it look as though I had said this. I did not say it; and even though I may have agreed with the statement, I indicated to the court that I was there to talk about scientific matters and not my own personal beliefs about the Bible and what it says.

Lastly, with regard to the matter of faith, it certainly is true that faith is involved whether a person holds to an evolution or a creation position. Often the distinction is not made clearly between the faith commitment to a belief in supernaturalism or naturalism. One takes either of these two positions; one also takes the position either that there was an abrupt appearance of unrelated groups in nature or that all types of organisms are related in a single tree (see Frair, Wayne. Biochemical evidence for the origin and dispersion of turtles.) . . .

It is my hope that future scholars will obtain a copy of the trial transcript; but if this is not possible, at least my opinion regarding some of these matters now should be clearer.

Transcript Blockage

Because of other commitments, I did not try seriously to obtain a transcript of my trial testimony until the summer of 1998. I contacted the attorney general, who referred me to the Federal District Court Clerk’s Office in Little Rock. He called me saying that the records had

been transported to Fort Worth, Texas. But my efforts to learn how to locate the records there were unsuccessful.

My next step was to contact a very capable and experienced lawyer. After considerable effort, she reported a level of frustration similar to my own. I then suspended my efforts to obtain the transcripts, pending further time and resources for following through with other possible options.

Even though I and other defense witnesses so far have not been able to obtain copies of our defense testimonies, Dr. Geisler has subsequently obtained his, which is presented in this book (see chapter 4 and appendix 4). I not only listened to his oral testimony as it was given at the trial but also heard all the other nine defense testimonies, each of which produced valuable information supporting Act 590.

But it was Geisler's penetrating presentation that exposed the fallacies of the plaintiffs' underlying philosophical positions. His trial testimony, now published in this book, stands as a monument of powerful and persuasive logic. This material had an important historical impact, but now that it is in print many years later, it will serve to enlighten and encourage many of us who still are facing similar challenges today.

Introduction

Creation versus evolution is in the news again. In fact, it has never left the news since the *Scopes* trial of 1925. It has only gone through mountain peaks and valleys.¹ The most important of these “peaks,” as far as the courts are concerned, include the following decisions.²

The *Scopes* Trial (1925)

The case of *State of Tennessee v. John Thomas Scopes* is one of the most famous trials in American history. The issue was whether or not it was constitutional to teach evolution instead of the biblical account of creation in public schools. The law in question read: “It shall be unlawful for any teacher . . . to teach any theory that denies the story of Divine Creation of man as taught in the Bible, and to teach instead that man

1. The battle has recently reached such a fevered pitch that one writer described the March 2006 meeting of the American Association for the Advancement of Science as a “call to arms for American scientists, meant to recruit troops for the escalating war against creationism and its spinoff doctrine, intelligent design” (Richard Monastersky, “On the Front Lines in the War over Evolution,” *Research and Books*, March 10, 2006).

2. Other court cases bearing on the issue include *Washington Ethical Society v. District of Columbia* (1957), *Smith v. Mississippi* (1970), *Wright v. Houston Independent School District* (1972), *Moore v. Gaston County Board of Education* (1973), *Steele v. Waters* (1975), and *Van Orden v. Perry* (2004).

has descended from a lower order of animals.” The decision rendered by the Dayton, Tennessee court was that it was illegal to teach evolution, and John Scopes was found guilty of doing just that. The resulting fine of \$100 was later overturned on a technicality: only a jury, not the judge, had the authority to assess the fine.

The Epperson Ruling (1968)

Tennessee was not the only state that had anti-evolution laws. Similar laws were passed in Oklahoma, Florida, and Texas. Between 1921 and 1929 such bills were introduced in some twenty states. Oklahoma repealed their law in 1926, but the Tennessee law stayed on the books until 1967. Arkansas too was a holdout, but their law was finally addressed by the U.S. Supreme Court in 1968. In this *Epperson v. Arkansas* decision the Court struck down the last state anti-evolutionary law. From the Court record we read:

Appellant Epperson, an Arkansas public school teacher, brought this action for declaratory and injunctive relief challenging the constitutionality of Arkansas’ “anti-evolution” statute. That statute makes it unlawful for a teacher in any state-supported school or university to teach or to use a textbook that teaches “that mankind ascended or descended from a lower order of animals”. . . . The statute violates the Fourteenth Amendment, which embraces the First Amendment’s prohibition of state laws respecting an establishment of religion. . . . The sole reason for the Arkansas law is that a particular religious group considers the evolution theory to conflict with the account of the origin of man set forth in the Book of Genesis. . . . The First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion. . . . A State’s right to prescribe the public school curriculum does not include the right to prohibit teaching a scientific theory or doctrine for reasons that run counter to the principles of the First Amendment. . . . The Arkansas law is not a manifestation of religious neutrality. . . .³

3. *Epperson v. State of Arkansas*, 393 U.S. 97 (1968).

The Supreme Court ruled that it was a *violation of the First Amendment* to forbid the teaching of evolution in public schools.

The *Segraves* Ruling (1981)

In *Segraves v. State of California*, a California superior court ruled that the California State Board of Education's *Science Framework* provided adequate accommodation to Kelly Segraves's views, contrary to his argument that the discussion of evolution violated his children's freedom of religion. Further, the court demanded a policy that included all areas of science, not just origins. This ruling did not penetrate to the heart of the issue of whether teaching creation was a violation of the First Amendment. Determination of this issue would await the next two decisions.

The *McLean* Ruling (1982)

In *McLean v. Arkansas Board of Education*, the issue was whether it was legal for the state to mandate that, whenever evolution is taught, creation should be taught as well in a balanced treatment of both. The U.S. District Court ruled that this would constitute "... an establishment of religion prohibited by the First Amendment to the Constitution which is made applicable to the states by the Fourteenth Amendment." Why? In the judge's words, because, "In traditional Western religious thought, the conception of a creator of the world is a conception of God. Indeed, creation of the world 'out of nothing' is the ultimate religious statement because God is the only actor."⁴ The case was never appealed, since Jon Buell of the Dallas-based Foundation for Thought and Ethics, which eventually produced a textbook (*Of Pandas and People*)⁵ for teaching creation alongside evolution

4. *McLean v. Arkansas Board of Education*, 529 F. Supp. 1255 (E.D. Ark. 1982).

5. Percival Davis and Dean H. Kenyon, and Charles B. Thaxton, *Of Pandas and People: The Central Question of Biological Origins* (Dallas: Haughton, 1993).

in public schools, requested that the Arkansas attorney general not appeal the case. The Foundation believed that a similar law that had been enacted in Louisiana was better worded, had less baggage, could be better argued, and, therefore, had a better chance of success when appealed to the Supreme Court. I personally felt that the downside of this was that the *McLean* court decision, with all of its problems and weaknesses, would become a bad precedent for future decisions if left unappealed. This is precisely what happened when a case involving this issue went to the Supreme Court (*Edwards v. Aguillard*, 1987).

Mozert v. Hawkins County Board of Education (1987)

Students and parents had claimed that it was a violation of their First Amendment rights of free exercise of religion for the school board to be “forcing student-plaintiffs to read school books which teach or inculcate values in violation of their religious beliefs and convictions.” Evolution was one such view to which they objected. This was upheld by the District Court but overruled by the Sixth Circuit Court. The latter court argued that even though students were offended, there was no evidence that anyone was “ever required to affirm his or her belief or disbelief in any idea or practice” taught in the text or class. The court insisted that there was a difference between “exposure” and being “coerced” to accept the ideas. They noted that the only way to avoid all offense was not to teach anything. They insisted that: “The lesson is clear: governmental actions that merely offend or cast doubt on religious beliefs do not on that account violate free exercise.” They insisted that this exposure to offensive views was simply a matter of “civil tolerance” of other views and did not compel anyone to a “religious tolerance” whereby they were compelled to give equal status to other religious views. “It merely requires a recognition that in a pluralistic society we must ‘live and let live.’”⁶

6. *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (1987).

The *Edwards* Ruling (1987)

The Louisiana law was shorter, but it too mandated that creation be taught in a balanced way whenever evolution is taught in public schools. When this law was tested in the highest court, the justices ruled (7 to 2)⁷ in *Edwards v. Aguillard* (1987) that it was an unconstitutional violation of the First Amendment to mandate teaching creation in a balanced way whenever evolution is taught in public schools. In the Court's own words, "The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind."⁸

Since the time of *Edwards*, many creationists have clung to wording in the decision which allows for teaching "all scientific theories about the origins of humankind" or "any scientific theory that is based on established fact."⁹ This they see as grounds for allowing creation (or intelligent design, as many now prefer to call it) along with evolution. However, focus shifted from state mandated laws to working with local school boards. Others have been satisfied with the *Edwards* court's statement that "We do not imply that a legislature could never require that scientific critiques of prevailing scientific theories be taught."¹⁰ Thus, they have attempted a negative path of getting textbooks and schools to admit that evolution is only a theory, not a fact, and/or to allow critique of evolutionary views. Still other efforts have settled for simply getting creationist material into public school libraries and hopefully into the hands of biology teachers with the hope that they will voluntarily teach both evolution and creation.

More positive efforts to teach design alternatives to evolution have been organized under the name of the "intelligent design" ("ID") movement. Under the initiative of University of California at Berkeley law professor Phillip Johnson in his book *Darwin on Trial* (Regnery, 1991), the pace was set for attacking the naturalistic grounds for evolution with the hope that some form of intelligent design could be taught alongside evolution in public schools. Michael Behe's landmark volume, *Darwin's Black Box*

7. Rehnquist and Scalia dissented. See chapter 6.

8. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

9. *Ibid.*

10. *Ibid.*

(Free Press, 1996), gave a scientific defense of intelligent design on the microbiological level. This, combined with a series of volumes by William Dembski (see his *Mere Creation: Science, Faith, and Intelligent Design* [InterVarsity, 1998]), forms the basis for this growing movement.

Differences between the ID movement and the earlier “scientific creationism” movement include several things.¹¹ First, ID as such is not committed to teaching a specific view of the age of the earth. The question is simply left open. Second, ID makes no affirmations about the nature or scope of Noah’s flood. Third, ID advocates make no identification of the cause of intelligent design with God or any supernatural being. Fourth, they oppose laws mandating the teaching of creation or intelligent design. Rather, they concentrate only on showing that some intelligent cause (whether in or outside the universe) is a more likely cause for first life and new life forms. In this way they hope to escape the religious baggage of the “scientific creation” movement and avoid the wrath of the high court against mandating teaching about a creator or any supernatural cause. However, this hope was dashed in the first test of ID in the courts (*Dover*, 2005).

The *Webster* Ruling (1990)

In *Webster v. New Lenox School District* (see appendix 5) the tables were turned. Ray Webster, who taught social studies at the Oster-Oakview Junior High School in New Lenox, Illinois, sued the school for forbidding him to teach “creation science” in his social studies class. Webster claimed this was a violation of his First and Fourteenth Amendment rights.

The superintendent of the school claimed Webster was advocating a Christian viewpoint that was prohibited by the high court, and that he was instructed not to teach “creation science, because the teaching of this theory had been held by the federal courts to be religious advocacy. . . . In *Edwards v. Aguillard* . . . (1987), the Supreme Court [had] determined

11. Also, because ID is less defined than most creationist efforts in the courts, it has a more diverse constituency, including proponents of Eastern Orthodoxy, Judaism, Roman Catholicism, and the Unification Church. Most creationists, however, would consider themselves Christian fundamentalists or evangelicals.

that creation science, as defined in the Louisiana act in question, was a nonevolutionary theory of origin that ‘embodies the religious belief that a supernatural creator was responsible for the creation of humankind.’”¹²

The district court concluded that Webster did not have a First Amendment right to teach creation science in a public school and determined that the school board had the responsibility to ensure that the “Establishment Clause” of the First Amendment was not violated. “By relying on *Edwards v. Aguillard* (1987), the district court determined that teaching creation science would constitute religious advocacy in violation of the first amendment and that the school board correctly prohibited Mr. Webster from teaching such material.” Strangely, the court added, “Webster has not been prohibited from teaching any nonevolutionary theories or from teaching anything regarding the historical relationship between church and state.”¹³ This failure on the part of the courts to see that the only “nonevolutionary” view is some form of creation (see appendix 6) continues to be a problem for the creationist cause, as is evident in the *Dover* decision (see chapter 7).

On the surface, it would appear that *Webster*, if left standing, would eliminate all possibility of teaching creation in public schools. However, there were mitigating circumstances in *Webster* (see appendix 6) that left a crack in the door for teaching ID in science classrooms. But that door was later slammed shut by the *Dover* decision (2005).

The *Pelozo v. Capistrano* Ruling (1994)

In *Pelozo v. Capistrano* the Ninth District Court of Appeals upheld the ruling that a teacher’s freedom of religion was not violated by a school district’s requirement that evolution be taught in biology classes. It ruled that the school district had the right to require a teacher to teach a scientific theory such as evolution in biology classes. Of course, this ruling did not state that creation could not be taught. For evolutionists, this had already been decided by the *Edwards* decision (1987). Most creationists disagreed,

12. *Webster v. New Lenox School District*, 917 F. 2d. 1004 (7th Cir. 1990).

13. *Ibid.*

claiming that creation could be taught as one of the alternate theories of origin allowed by *Edwards*. Other creationists, like myself, feared that the courts would see this as applying only to alternate naturalistic theories. The *Dover* decision (2005) confirmed this fear, at least on a local scale.

The Freiler Ruling (1997)

In *Freiler v. Tangipahoa Board of Education* the U.S. District Court of Louisiana rejected a policy that required that a disclaimer be read whenever evolution is taught, ostensibly to promote critical thinking. The court noted that this disclaimer applied only to evolution, not to creation, and therefore that, “in maintaining this disclaimer, the School Board is endorsing religion by disclaiming the teaching of evolution in such a manner as to convey the message that evolution is a religious viewpoint that runs counter to . . . other religious views.”¹⁴ Later, in 2000, the Fifth Circuit Court of Appeals affirmed the decision. The chilling effect of this ruling goes beyond this particular disclaimer and discourages other disclaimers as well, even though the actual decision does not rule out the possibility of other disclaimers regarding origins.

The LeVake Ruling (2000)

LeVake v. Independent School District came from the District Court for the Third Judicial District of the State of Minnesota. Rodney LeVake, a high school biology teacher, had argued for his right to teach “evidence both for and against the theory” of evolution. The school district contended that his proposal did not match the curriculum, which required teaching evolution. Given the precedent case law requiring a teacher to teach what he is hired to teach, the court ruled that LeVake’s free speech rights did not override the required curriculum and the school district was not guilty of religious discrimination in denying his right to teach both for and against evolution. Interestingly, this is exactly the opposite of what evolutionists argued at the *Scopes* trial in 1925.

14. *Freiler v. Tangipahoa Board of Education*, No. 94-3577 (1997).

The *Dover* Ruling (2005)

The first test for teaching intelligent design (ID) hit the courts in the *Kitzmiller v. Dover Area School District* case. The Dover Area School District near Harrisburg, Pennsylvania, had adopted a policy requiring that students be read a statement that included the following:

The Pennsylvania Academic Standards requires students to learn about Darwin's theory of evolution. . . . Because Darwin's theory is a theory. . . . the theory is not a fact. . . . Intelligent design is an explanation of the origin of life that differs from Darwin's view. The reference book, "Of Pandas and People," is available for students who might be interested in gaining an understanding of what intelligent design actually involves.¹⁵

This policy was not put forward by any group connected with the ID movement, such as the Seattle-based Discovery Institute, nor by the producers of the ID text for public schools, *Of Pandas and People*.¹⁶ Indeed, the associate director of the Discovery Institute, John West, released a statement which read in part, "Discovery Institute strongly opposes the ACLU's effort to make discussions of intelligent design illegal. At the same time, we disagree with efforts to get the government to require the teaching of intelligent design."¹⁷

The Dover policy was opposed by the ACLU and Americans United for Separation of Church and State and defended by the Thomas More Law Center, a Christian law firm based in Ann Arbor, Michigan. The *Dover* case was heard by U.S. District Court Judge John Jones III between September 26 and November 4, 2005. The decision was rendered on December 20, 2005. It ruled that (1) the Dover School District policy is unconstitutional, (2) intelligent design and creation its progenitor are not science and should not be taught in Dover science classes, and (3) intelligent design and other forms of creation are essentially religious and are, therefore, a violation of the First Amendment establishment

15. *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

16. See note 5, above.

17. See John G. West, "Discovery Institute's Position on Dover, PA 'Intelligent Design' Case," September 21, 2005, at <http://www.discovery.org/scripts/viewDB/index.php?command=view&cid=2847>.

clause. In the words of the court, “For the reasons that follow, we hold that the ID [intelligent design] Policy is unconstitutional pursuant to the Establishment Clause of the First Amendment of the United States Constitution and Art. I, § 3 of the Pennsylvania Constitution.”¹⁸

The *Dover* decision has not been appealed because the school board, which now has an anti-creation majority, does not want to appeal it. However, the issue inevitably will be raised again and eventually will be brought before the U.S. Supreme Court. How the Court will rule no one knows for sure. But if precedent is followed, it is unlikely that the high court will (1) allow any creation or design view to be mandated for schools, or (2) allow any view to be taught that implies a supernatural creator.

Meanwhile, the lessons of history may be gleaned to guide the future of this discussion. Having been an eyewitness of the famous “Scopes II” (*McLean*, 1982)¹⁹ trial, I feel compelled to cast what light I can on this very important issue. Indeed, since the Arkansas courts refused to publish my testimony (given in 1981), which was crucial to the outcome of the trial, until after the Supreme Court ruled against teaching creation six years later (in 1987), there is a vital part of history that has been hitherto unknown that is now being revealed for the first time in this publication (see chapter 4). It is to these ends that I present this important but missing link in the history of the creation-evolution controversy, in the hope that it may cast some light on the issue as it is now again coming into the courts and—hopefully—have a positive influence on the outcome.

18. *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

19. See our eyewitness account in Norman L. Geisler with A. F. Brooke II and Mark J. Keough, *The Creator in the Courtroom: “Scopes II”* (Milford, Mich.: Mott Media, 1982).