

**Closing Argument for the Plaintiffs in
*Tammy Kitzmiller, et al. v. Dover Area School District, et al.***

**Eric Rothschild, Esquire
Pepper Hamilton LLP**

November 4, 2005

This has been a long and exhausting trial but it has been a privilege to appear before you and your entire chambers. I agree with Mr. Thompson that both parties have been given the opportunity to fully and fairly present their cases. On the plaintiffs' behalf, I want to summarize that case.

What am I supposed to tolerate? A small encroachment on my First Amendment rights? Well, I'm not going to. I think this is clear what these people have done. And it outrages me.

That is the statement of one citizen of Dover, Fred Callahan, standing up to the Wedge that has been driven into his community and his daughter's high school by the Dover School Board's anti-evolution, pro-intelligent design policy.

The strategy that the Discovery Institute announced in its Wedge document for promoting theistic and Christian science, and addressing cultural conditions that it disagrees with is to denigrate evolution and promote supernatural intelligent design as a competing theory. This is the Discovery Institute that advised both William Buckingham and Alan Bonsell before the board voted to change the biology curriculum. This is the Discovery Institute that defendants' experts Michael Behe and Scott Minnich proudly associate with, along with Intelligent Design leaders William Dembski, Paul Nelson, Jonathan Wells, Stephen Meyer, Nancy Pearcey and Phillip Johnson. This groups' strategy of Christian apologetics and cultural renewal includes the integration of intelligent design into public school science curricula, which is now on trial in this courtroom. Dover is the thin edge of the Wedge.

Let's review how we got here. Beginning with Alan Bonsell's election to the Dover Area School Board at the end of 2001, the teaching of evolution in biology class became a target of the board, and teaching creationism was suggested as an alternative. As Mr. Gillen told the Court in his opening statement, Mr. Bonsell "had an interest in creationism. He wondered whether it could be discussed in the classroom."¹ He didn't just wonder to himself -- he wondered out loud about teaching creationism at two board retreats. He made his opposition to the teaching of evolution known to Mr. Baksa and the science teachers. In 2004, Mr. Bonsell became the president of the board, and chose Bill Buckingham to head the curriculum committee. When the teachers and members of the community tried to get a new biology book approved, members of the board, including particularly Mr. Buckingham, but also Mr. Bonsell, insisted in public board meetings that any new biology book include creationism. There is no evidence that any of the board members that eventually voted to change the biology curriculum objected to this idea. Heather Geesey emphatically endorsed it in her letter to the *York Sunday News*. At the same meetings in June when he discussed creationism, Mr. Buckingham also made the unforgettable statement that "2000 years ago a man died on a cross, can't we take a stand for him now", and, after one meeting, said to a reporter that "we are not a nation founded on Muslim ideas or evolution, but on Christianity, and our children should be taught as such."

Around the time of those June meetings, Buckingham received materials and guidance from the Discovery Institute, the sponsors of theistic, Christian science. After that, Intelligent Design became the label for the board's desire to teach creationism.

At this trial, plaintiffs have submitted overwhelming evidence that Intelligent Design is just a new name for creationism, discarding a few of traditional creationism's tenets

¹ 9/26, A.M., 18-19.

such as direct reference to God or the Bible, and a specific commitment to a young earth, but maintaining essential aspects, particularly the special creation of kinds by a supernatural actor.

Make no mistake. The leading sponsors on the board for the change to the biology curriculum, and administrators Nilsen and Baksa, knew that Intelligent Design was a form of creationism when they added it to the curriculum.

[P-149; 000213]

Both Casey Brown and Jennifer Miller testified that Assistant Superintendent Baksa circulated this chart that describes Intelligent Design as a form of progressive and old earth creationism to members of the board curriculum committee. Mrs. Harkins testified that she had this document as early as June of 2004. The second column makes clear that Intelligent Design, as espoused by Michael Behe and Phillip Johnson, is Progressive or Old Earth Creationism.

[D-35]

Mr. Baksa testified in response to questions from his lawyer that he researched Intelligent Design and Pandas before the board adopted both into the district's curriculum and that his research included this order form from the Institute for Creation Research, which promotes Pandas, describing it as a book that "contains interpretations of classic evidences in harmony with the creation model."

Board president Bonsell and superintendent Nilsen testified that the definition of Intelligent Design found on pages 99-100 of Pandas is a tenet of creationism.

[P-70]

The District's Solicitor Stephen Russell sent this email to Richard Nilsen advising that Thomas More refers to the "creationism issue as intelligent design." This email was

circulated to board members, reinforcing the connection between Intelligent Design and creationism.

Board members Jeff and Casey Brown, and the science teachers also warned the board that Pandas and Intelligent Design are creationism, or “too close for comfort” and that there could be legal consequences for teaching it.

This information equating Intelligent Design with creationism did not deter the school board at all. It emboldened them. They rushed the curriculum change to a vote, discarding all past practices on curriculum adoption such as placing the item on a planning meeting agenda before bringing it to a vote, involving the citizen’s curriculum advisory committee, or showing deference to the district’s experts on the curriculum item, the school science teachers.

The record is overwhelming that board members were discussing creationism in the meetings in June 2004. Two separate newspaper reporters, Heidi Bernhard-Bubb and Joe Maldonado, reported this in articles about the meetings, which they confirmed in sworn testimony in court. Former board members Casey and Jeff Brown, and plaintiffs Barrie Callahan, and Christy and Bryan Rehm, all testified to these facts. And finally, at the end of this trial, assistant superintendent Mike Baksa, an agent of the defendant Dover Area School District in this case, admitted that Bill Buckingham discussed creationism at the June board meetings when discussing the biology curriculum. After a year of denying that fact, forcing reporters to testify, the truth was confirmed by defendants’ own witness. And of course we saw Mr. Buckingham talk about creationism on the tape of the Fox 43 interview, using language almost identical to the words attributed to him by newspaper reporters covering the June 2004 board meetings. His explanation that he “misspoke” the word “creationism” because it was being used

in news articles, which he testified he had not read, was frankly incredible. We all watched that tape and I'm going to play it once more. **[PLAY TAPE.]** That was no deer in the headlights. That deer was wearing shades, and was totally at ease.

Testimony from many witnesses called by the plaintiffs, and the same newspaper reports establish that Bill Buckingham made the statement "2000 years ago a man died on a cross for us" when discussing the biology textbook in June. After preparing together for their January 2004 depositions, four witnesses for the defense – Richard Nilsen, Bill Buckingham, Alan Bonsell and Sheila Harkins – all testified that Buckingham did not make that statement at that meeting, but rather only at a different meeting in November when the Pledge of Allegiance was discussed. But every plaintiff, teacher, reporter and dissenting board member who testified at trial knows this is not true, and defendants' witnesses Harkins and Baksa concede the statement could have been made in June, as the contemporaneous news reports suggest.

What I am about to say is not easy to say, and there is no way to say it subtly. Many of the witnesses for the defendants did not tell the truth. They did not tell the truth at their depositions, and they have not told the truth in this courtroom. They are not telling the truth when they assert that only Intelligent Design, and not creationism were discussed at the June 2004 board meetings. They are not telling the truth when they place the "2000 years ago" statement at the meeting discussing the pledge rather than the June 14, 2004 meeting discussing the biology textbook. They did not tell the truth in their depositions, or for that matter to the citizens of Dover, about how the donation of the Pandas books came about.

Truth is not the only victim here. In misrepresenting what occurred in the runup to the change to the biology curriculum, there were human casualties. Two hard working freelance reporters had their integrity impugned, and were dragged into a legal case solely

because the board members would not own up to what they had said. They could have just asked Mike Baksa – he knew. Trudy Peterman, the former principal, has not testified in this case, but we know she was negatively evaluated for what she reported in her April 1, 2003 memo about her conversation with Bertha Spahr, and Superintendent Nilsen continued to question her truthfulness in this court. But he never asked Mrs. Spahr what she told Dr. Peterman on the subject of “creationism.” Had he asked her he would have heard exactly what you heard from Mrs. Spahr in this courtroom: Mr. Baksa did tell her that Board Member Bonsell expressed his desire to have creationism taught 50/50 or equal time with evolution. And of course you have heard from board members who were at that meeting -- Casey Brown, Jeff Brown, Barrie Callahan – that Mr. Bonsell did say he wanted creationism taught 50/50 with evolution. In fact, Mrs. Callahan took contemporaneous notes recording Mr. Bonsell saying just that. And Dr. Nilsen also has contemporaneous notes showing that Mr. Bonsell talked about creationism. Confronted with Dr. Nilsen’s notes, Mr. Bonsell finally admitted he talked about creationism. Defendants’ smear of Dr. Peterman is unpersuasive and inexcusable.

There are consequences for not telling the truth. The board members and administrators who testified untruthfully for the defendants are entitled to no credibility – none. In every instance where this Court is confronted with a disputed set of facts as between the plaintiffs’ witnesses and defendants’ witnesses that the Court deems to have been untruthful, the plaintiffs’ witnesses’ account should be credited.

Furthermore, this Court should infer from their false statements that defendants are trying to conceal an improper purpose for the policy they approved and implemented, namely an explicitly religious purpose.

The board's behavior mimics the Intelligent Design Movement at large. The Dover board discussed teaching "creationism," switched to the term "intelligent design" to carry out the same objective and then pretended they had never talked about creationism. As we learned from Dr. Forrest's testimony, the Intelligent Design movement used the same sleight of hand in creating the Pandas textbook. They wrote it as a "creationist" book, and then, after the Edwards decision outlawed teaching creationism, simply inserted the term "intelligent design" where "creationism" had been before. Dean Kenyon wrote the book at the same time he was advocating "creation science" as the sole scientific alternative to the theory of evolution. But now, like the Dover Board, the Intelligent Design movement now pretends that it was never talking about creationism.

I want to make a very important point here. In this case, we have abundant evidence of the religious purpose of the Dover School Board that supports a finding that the board's policy is unconstitutional. However, if the board had been more circumspect about its objectives, or better at covering its tracks, it would not make the policy it passed any less unconstitutional.

Your Honor, you have presided over a six week trial. Both parties have had a fair opportunity to present their cases about what happened in the Dover community and about the nature of Intelligent Design. Leading experts from both sides of the issue have given extensive testimony on the subject.

This trial has established that Intelligent Design is unconstitutional because it is an inherently religious proposition, a modern form of creationism. It is not just the product of religious people, it does not just have religious implications, it is in its essence religious. Its

essential religious nature does not change whether it is called “Creation Science” or “Intelligent Design” or “Sudden Emergence Theory.” The shell game has to stop.

If there is any doubt about the religious nature of Intelligent Design, listen to these exemplary descriptions of Intelligent Design by its leading proponents, which are in evidence in this case:

[Intelligent Design] means that we affirm that God is objectively real as creator, and that the reality of God is tangibly recorded in evidence accessible to science, particularly in biology.

Phillip Johnson, “The Battle of Beginnings: Why Neither Side is Winning the Creation Evolution Debate.” (Exh. 328).

...in its relation to Christianity, intelligent design should be viewed as a ground clearing operation that gets rid of the intellectual rubbish that for generations has kept Christianity from receiving serious consideration.

William Dembski, “Intelligent Design’s Contribution to the Debate Over Evolution, A Reply to Henry Morris.” P-386. (Forrest, Oct. 5, PM, 50:17-22, 51:3-7).

[I]ntelligent design is just the Logos theology of John’s Gospel restated in the idiom of information theory.

William Dembski, “Signs of Intelligence, A Primer on the Discernment of Intelligent Design.” P-357. (Forrest, Oct. 5, PM, 55:3-10).

Michael Behe told this Court that Intelligent Design is not a religious proposition but he told readers of the New York Times that the question Intelligent Design poses is whether “science can make room for religion.” He acknowledges that the more one believes in God, the more persuasive Intelligent Design is. The religious nature of Intelligent Design is also proclaimed loudly and repeatedly in the Wedge document.

The other indisputable fact that marks Intelligent Design as a religious proposition that can not be taught in public schools is that it argues that a supernatural actor designed and created biological life. “Supernatural creation” is the religious proposition that the Supreme Court said in Edwards can not be taught in public schools.² And it’s obvious why this has to be the case – when we talk about an actor outside nature with the skill set to design and create biological life we are talking about God. The experts that testified at this trial admit that in their view, the Intelligent Designer is God. The Discovery Institute’s Wedge Document’s first paragraph bemoans the fact that the proposition that “human beings are created in the image of God” has been undermined by the theory of evolution. Professor Behe admitted that his argument for Intelligent Design was the same as William Paley’s, which is a classic argument for the existence of God.

Who else could it be? Michael Behe suggests candidates like aliens, or time travelers with a wink and nod, not seriously. Intelligent Design hides behind an official position that it does not name the designer, but as Dr. Minnich acknowledged this morning all of its advocates believe that the Designer is God. Intelligent Design could not come closer to naming the designer if it was spotted the letters “G” and “O”.

² Edwards v. Aguillard, 482 U.S. 578, 592 (1987)

The case for Intelligent Design as a religious proposition is overwhelming; the case for it as a scientific proposition, by contrast, is non-existent. It has been unanimously rejected by the National Academy of Science, the American Association for Advancement of Science, and every other major scientific and science education organization that has considered the issue, including, we learned this morning, the American Society of Soil Scientists. The fact that it invokes the supernatural is, by itself, disqualifying. As William Dembski stated in “What Every Theologian Should Know About Creationism, Evolution and Design,” unless the ground rules of science are changed to allow the supernatural, Intelligent Design has “no chance Hades.”³ In this courtroom, Steve Fuller confirmed that changing the ground rules of science is Intelligent Design’s fundamental project. And if defendants get their way, those ground rules get changed first in Dover High School.

There is a reason that science does not consider the supernatural – it has no way of measuring or testing supernatural activity. As Professor Behe testified, you can never rule out Intelligent Design. Defendants’ comparisons to the Big Bang or Newton’s work makes no sense. For those, as with many scientific propositions, we may have, at one time, attributed natural phenomena to supernatural or divine action before working out the natural explanations that fall under the heading science. Intelligent Design is moving in the opposite direction – replacing a well developed natural explanation for the development of biological life with a supernatural one, which it has no evidence to support.

The positive case for Intelligent Design described by plaintiffs’ expert Michael Behe, the leading light of the Intelligent Design movement, is a meager little analogy that collapses immediately upon inspection. Behe’s argument, summed up by the amorphous phrase

³ P-355.

“purposeful arrangement of parts,” is that if we can tell that a watch, or keys, or a mousetrap was designed, we can make the same inference about the design of a biological system by an intelligent designer. This is, as Professor Behe acknowledged, the same argument that Paley made, the argument that Paley made for the existence of God.

Plaintiffs’ witnesses Robert Pennock and Kenneth Miller explained, and under cross examination, defendants’ expert Behe admitted, that the differences between inferences to design of artifacts and objects and to design of biological systems overwhelm any purported similarity. Biological systems can replicate and reproduce, and have had millions or billions of years to develop in that fashion, providing opportunities for change that the keys, watches, stone tools, and statues designed by humans do not have. And, of course, the objects and artifacts we recognize as designed in our day to day life are all the product of human design – we know the designer. In the case of intelligent design of biological life, however, that crucial information is, to use Professor Behe’s own phrase, a “black box.” Because we know that humans are the designers of the various inanimate objects and artifacts discussed by Professor Behe, we also know many other useful pieces of information – what the designer’s needs, motives, abilities, and limitations are. Because we are that designer, we can actually recreate the designer’s act of creation. Professor Behe admitted that none of this information is available for the inference to intelligent design of biological systems. In fact, the only piece of information that is available to carry out that inference is appearance – “if it looks designed, it must be designed.” But if that explanation makes sense, than the natural sciences must be retired. Almost everything we see in our marvelous universe – biological, chemical, physical – could be subsumed in this description.

Other than this meager analogy, Intelligent Design is nothing but a negative argument against evolution, and a poor one at that. This was made strikingly clear when

Professor Behe was asked about his statement that “Intelligent Design’s only claim is about the proposed mechanism for complex biological systems”, and he admitted that Intelligent Design proposed no mechanism for the development of biological systems, only a negative argument against one of the mechanisms proposed by the theory of evolution.

And of course, Professor Behe also had to admit, reluctantly, that Intelligent Design, as explained in Pandas, goes far beyond the argument about mechanism to attack another core proposition of the theory of evolution: common descent. In page after page of Pandas, the authors argue against common descent in favor of the creationist, biblical argument for the abrupt appearance of created kinds: birds with beaks, fish with fins, etc.

The arguments in Pandas are based on wholesale misrepresentations of scientific knowledge, much of which has been known for years, or even decades before Pandas was published, and some of which has been developed after its last publication, demonstrating that science marches on while Intelligent Design stands still. Kevin Padian was the only evolutionary biologist who testified in this trial. He described pervasive misrepresentations of the fossil record, and other facts in Pandas. This testimony went completely unrebutted.

The board members cannot claim ignorance about the flaws in Pandas. Dr. Nilsen and Mr. Baksa testified that the science teachers warned them that Pandas had faulty science, was outdated, and beyond the reading level of ninth graders. The board members had no contrary information – they have no meaningful scientific expertise or background, and did not even read Pandas thoroughly. Their only outside input in favor of Pandas was a recommendation from Dick Thompson of the Thomas More Law Center, a law firm with no known scientific expertise.

What these board members are doing then, knowingly, is requiring administrators and teachers to tell the students – “go read the book with faulty science.”

It is not just Pandas that is faulty. It is the entire Intelligent Design project. They call it a scientific theory. But they have done nothing. They have produced nothing. Professor Behe wrote in Darwin’s Black Box that if a scientific theory does not publish, it must perish. That is the history of Intelligent Design. As Professor Behe testified, there are no peer reviewed articles in science journals reporting original research or data that argue for Intelligent Design. By contrast, Kevin Padian, by himself, has written more than 100 peer reviewed scientific articles.

Professor Behe’s only response to the Intelligent Design movement’s lack of production was repeated references to his own book, Darwin’s Black Box. He was surprised to find out that one of his purported peer reviewers wrote an article that revealed he had not even read the book. But putting that embarrassing episode aside, consider the following facts. Behe has admitted in his article Reply to My Critics that his central challenge to natural selection, irreducible complexity, is flawed because it does not really match up with the claim made for evolution. But he has not bothered to correct that flaw. He also admits that there is no original research reported in Darwin’s Black Box, and in the almost ten years since its publication it has not inspired research by other scientists.

Professor Behe’s testimony and his book Darwin’s Black Box is really one extended insult to hard working scientists, and the scientific enterprise. For example, Professor Behe asserts in Darwin’s Black Box that “the scientific literature has no answers to the question of the origin of the immune system” and “the complexity of the system dooms all Darwinian explanations to frustration.” I showed Professor Behe more than 50 articles, as well as books on

the evolution of the immune system. He had not read most of them, but he confidently, contemptuously dismissed them as inadequate. He testified that it is a waste of time to look for answers about how the immune system developed.

Thankfully, there are scientists who do search for answers to the question of the origin of the immune system. For Pete's sake, this is the immune system – our defense against debilitating and fatal diseases. The scientists who wrote those books and articles toil in obscurity, without book royalties or speaking engagements. Their efforts help us combat and cure serious medical conditions. By contrast, Professor Behe and the entire Intelligent Design Movement are doing nothing to advance scientific or medical knowledge, and are telling future generations of scientists, don't bother.

Not only does Intelligent Design not present its argument in the peer reviewed journals, it does not test its claims. You heard plaintiffs' experts Pennock, Padian, and Miller testify that that scientific propositions have to be testable. Defendants' expert Steven Fuller agreed that for Intelligent Design to be science it must be tested, but he admitted that Intelligent Design had not done so.

Of course, there is an obvious reason that Intelligent Design hasn't been tested – it can't be. The proposition that a supernatural intelligent designer created a biological system is not testable, and can never be ruled out.

Intelligent Design does not even test its narrower claims. As plaintiffs' experts explained, and again Dr. Fuller agreed, arguments like irreducible complexity, even if correct, only negate aspects of the theory of evolution, they do not demonstrate Intelligent Design. It doesn't logically follow. But Intelligent Design does not even test its negative arguments. Professor Behe and Professor Minnich articulated a test of irreducible complexity – grow a

bacterial flagellum in the laboratory. The test is of course ridiculous – evolution that doesn't occur over two or five or ten years in a laboratory population doesn't rule out that evolution over billions of years.

But if Professor Behe and Professor Minnich thinks this is a valid test of their design hypothesis, they or their fellow Intelligent Design adherents should be running it. But they haven't. Their model of science is – we throw out an idea, sit back, do no research, and challenge evolutionists to shoot it down. That's not how science works. Sponsors of a scientific proposition offer hypotheses and then they test it.

Consider the example that Ken Miller gave. Evolutionary biologists were confronted with the fact that we have two fewer chromosomes than chimpanzees, the creatures hypothesized to be our closest living ancestors based on molecular evidence and homologies. Evolutionary biologists didn't sit back and tell creationists to figure out this problem. They rolled up their sleeves and tackled it themselves, and figured it out. That's real science.

And, in fact, the common ancestry of chimpanzees and humans is real science. It's the real science that William Buckingham and Alan Bonsell made sure that students of Dover would never hear. Make no mistake about it – William Buckingham was determined that Dover students would not be taught anything that conflicts with the special creation of humans. No mural, no monkeys to man, no Darwin's *Descent of Man*, his wife's sermon from Genesis – this was all focused on protecting the biblical proposition that man was specially created by God.

Similarly, Alan Bonsell ensured that the entire biology curriculum was molded around his religious beliefs. He testified in this courtroom that it is his personal religious belief that the individual kinds of animals – birds, fish, humans were formed as they currently exist,

and do not share common ancestors with each other.⁴ Macroevolution is inconsistent with his religious beliefs. The only aspect of the theory of evolution that conforms to his religious beliefs, is microevolution – change within a species. He also believes in a young earth, thousands, not billions of years old.⁵

Sure enough, in the fall of 2003, as the older of his two children prepared to take biology, Mr. Bonsell sought assurances that the teachers only taught microevolution, and not what the board members call “origins of life” -- macroevolution, speciation, common ancestry – all the things that contradict his personal religious beliefs. He received the assurances he was looking for, that most of evolution wasn’t being taught. On October 18, this practice of depriving students of the thorough teaching of the theory of evolution became board policy.

In fairness to the teachers, they weren’t really shortchanging the students to the extent Mr. Bonsell hoped. Mrs. Miller testified that she does teach speciation – with Darwin’s finches – her attempt to teach evolutionary theory as non-confrontationally as possible.

Mr. Buckingham and Mr. Bonsell also wanted to make sure that the teachers pointed out gaps and problems with the parts of the theory of evolution they did teach. None of the board members cared whether students knew about gaps and problems in the theory of plate tectonics, or germ theory, or atomic theory. But for evolution, it was essential that the students see all the purported warts. The resource the Board relied upon for information about problems with evolution was not any of the mainstream scientific organizations, but rather the Discovery Institute, the think tank pursuing theistic science.

⁴ 10/31, P.M., 54-56.

⁵ 10/31, P.M., 57.

For Mr. Bonsell, however, making sure that the teaching of evolution didn't contradict his religious beliefs wasn't enough. He then joined Mr. Buckingham in promoting an idea that affirmatively supported his religious beliefs. Intelligent design asserts that birds are formed with beaks, feathers, and wings, and fish with fins and scales – created kinds, just like Mr. Bonsell believes in. And Intelligent Design accommodates Mr. Bonsell's belief in Young Earth Creationism – he is welcome in Intelligent Design's Big Tent.

And if there was any doubt that the board wanted to trash evolution not teach it, it was confirmed by the development of the statement read to the students. While there was nothing administration or faculty could do about Intelligent Design, the language they developed about evolution was actually quite honest and reasonable:

“Darwin's Theory of Evolution continues to be the dominant scientific explanation of the origin of species.”

“Because Darwin's theory is a theory, there is a significant amount of evidence that supports the theory, although it is still being tested as new evidence is discovered.”

“Gaps in the theory exist for which there is yet no evidence.”

If this language had been included in the statement read to students it would not have cured the harm caused by promoting the religious argument for Intelligent Design, and directing students to the deeply flawed Pandas book. But at least it would have conveyed to students that the theory of evolution is well accepted, and supported by substantial evidence.

This board would have none of it. The only things that the board wanted the students to hear about evolution were negative things – there are gaps, it is a theory not a fact – language that defendants' own expert Steve Fuller admitted is misleading, and denigrates the theory of evolution. As Dr. Fuller and plaintiffs' expert Brian Alters agreed, the board's message was: we're teaching evolution because we have to. As if their views weren't clear

enough, the board issued a newsletter which accused the scientific community of using different meanings of the word “evolution” to their advantage, as if scientists were trying to trick people into believing something that there isn’t evidence to support.

Your Honor, you may remember Cyndi Sneath’s testimony about her seven year old son Griffin, who is fascinated by science. This board is telling Griffin that scientists are just tricking you. It’s telling students like Griffin the same thing Mr. Buckingham told Max Pell. Don’t go off to college where you will be “brainwashed.” Don’t research the theory of evolution. The board is delivering Michael Behe’s message. Don’t bother studying the development of the immune system – you’re just doomed to failure. In science class, they are promoting the unchanging certainty of religion in place of the adventure of open ended scientific discovery that Jack Haught described.

How dare they? How dare they stifle these children’s education? How dare they restrict their opportunities? How dare they place a ceiling on their aspirations, on their dreams? Griffin Sneath can become anything. He could become a science teacher like Bert Spahr or Jen Miller or Bryan Rehm or Steven Stough, turning students on to the wonders of the natural world and the satisfaction of scientific discovery, perhaps in Dover or perhaps another lucky community. He could become a college professor and renowned scientist like Ken Miller or Kevin Padian. He might solve mysteries about the immune system because he refused to quit. He might even figure out something that changes the whole world. Like Charles Darwin.

This board did not act to improve science education. It took one area of the science curriculum that has historically been the object of religiously motivated opposition, and they molded it to their particular religious viewpoint. You heard five board members testify in this court. I have focused today on Mr. Buckingham and Mr. Bonsell, who were the most

explicit about their creationist objectives, and who worked hardest to browbeat administrators and teachers to their will. But Mrs. Geesey's letter to the editor establishes her creationist position. Her testimony, and Mrs. Cleaver's also demonstrates that they abdicated their decision making responsibility to Mr. Bonsell and Mr. Buckingham. In Mrs. Harkins' case, it is hard to discern what her motives were, beyond depriving students of the book their teachers said they needed, while supplying them with books describing a concept, intelligent design, that, to this day, she does not understand. The board never discussed what Intelligent Design is, or how it could improve science education. Clearly no valid secular purpose can be derived from those facts. All that remains is the religious objectives represented in Bonsell and Buckingham's statements about teaching creationism and Christian values, the same values that animate the entire Wedge Strategy.

Mr. Buckingham said that separation of church and state is a myth – and then he acted that way. Mr. Buckingham and his fellow board members wanted religion in the public schools as an assertion of their rights as Christians. But Christianity and all religious exercise have thrived in this country precisely because of the ingenious system erected by our founders – which protects religious belief from intervention by government.

The law requires that government not impose its religious beliefs on citizens not because religious is disfavored or unimportant; but because it is so important to so many of us, and because we hold a wide variety of religious beliefs, not just one. The Supreme Court explained in McCreary that

[O]ne of the major concerns that prompted adoption of the Religion Clauses was that [t]he Framers and the citizens of their time intended ... to guard against the civil divisiveness that follows when the Government weighs in on one side of a religious debate.

McCreary, 125 S. Ct. at 2742.

We have seen that divisiveness in Dover. School Board member pitted against School Board member. Administrators and board members no longer on common ground with the school teachers. Julie Smith's daughter asking "What kind of Christian are you?"⁶ Casey Brown and Bryan Rehm being called atheists.⁷ It even spilled over into this courtroom, where Jack Haught, prominent theologian and practicing Catholic, had his religious beliefs questioned, not as they relate to the subject of evolution, but on basic Christian tenets like the virgin birth of Christ. That was impeachment by the government's lawyers in this case.

It is ironic that this case is being decided in Pennsylvania, in a case brought by a plaintiff named Kitzmiller, a good Pennsylvania Dutch name. This colony was founded on religious liberty. For much of the 18th century, Pennsylvania was the only place under British rule where Catholics could legally worship in public.

In his Declaration of Rights, William Penn stated:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishment or modes of worship.

⁶ 9/28, P.M., 38.

⁷ 9/30, P.M., 71-97.

In defiance of these principles, which have served this state and this country so well, this board imposed their religious views on the students in Dover High School. You have met the parents who have brought this lawsuit – the love and respect they have for their children spilled out of that witness stand and filled this courtroom. They do not need Alan Bonsell, William Buckingham, Heather Geesey, Jane Cleaver and Sheila Harkins to teach their children right from wrong. They did not agree that this board could commandeer the religious education of their children, and the constitutions of this country and this Commonwealth, do not permit it.